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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 24 and 27

[T.D. TTB–31]

RIN 1513–AB00

Certification Requirements for Imported Natural Wine (2005R–002P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Temporary rule; Treasury decision.

SUMMARY: This temporary rule implements the new certification requirements regarding production practices and procedures for imported natural wine contained in section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004, which amended section 5382 of the Internal Revenue Code of 1986. We are amending the wine regulations to incorporate these changes. We also are soliciting comments from all interested parties on the implementation of these new requirements through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: Temporary rule effective August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Gail Davis, International Trade Division, Alcohol and Tobacco Tax and Trade Bureau (202–927–8110).

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, 118 Stat. 2434 (''the Act''), signed by President Bush on December 3, 2004. Section 2002 of the Act revised section 5382(a) of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5382(a), which sets forth standards regarding what constitutes proper cellar treatment of natural wine. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the IRC provisions relating to wine.

The revision of section 5382(a) took effect on January 1, 2005, and involved the following two principal substantive changes: (1) The addition of a new paragraph (1)(B) to provide that, in the case of wine produced and imported subject to an international agreement or treaty, proper cellar treatment of natural wine includes those practices and procedures acceptable to the United States under the agreement or treaty; and (2) the addition of a paragraph (3) setting forth a new certification requirement regarding production practices and procedures for imported natural wine produced after December 31, 2004. The new certification provision directs the Secretary of the Treasury to accept the practices and procedures used to produce the wine if, at the time of importation, one of the following conditions is met:

1. The Secretary has on file or is provided with a certification from the government of the producing country, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary;

2. The Secretary has on file or is provided with a certification required by an international agreement or treaty covering proper cellar treatment, or the wine is covered by an international agreement or treaty covering proper cellar treatment that does not require a certification; or

3. In the case of an importer that owns or controls or that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary, the importer certifies that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary. For purposes of this provision, the new paragraph (3) text also defines ''affiliate'' as having the meaning contained in section 117(a)(4) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)(4)) and as including ''a winery's parent or subsidiary or any other entity in which the winery's parent or subsidiary has an ownership interest.''

Based on the January 1, 2005, effective date of the section 2002 statutory change and the fact that the new requirements apply to natural wine produced on or after that date, TTB believes that proper administration and enforcement of those requirements necessitates the adoption of implementing regulations as a temporary rule with immediate effect. TTB believes that such implementing action will ensure that affected industry members have sufficient advance knowledge of the regulatory requirements, and TTB notes in this regard that, given the ''produced'' statutory standard, the vast majority of, if not all, wine importers will not have to meet the certification requirements until the summer of 2005.

Public Meeting; Submission of Comments

TTB held a public meeting regarding these new requirements on December 15, 2004, in Washington, DC, which was announced in Notice No. 26, published in the **Federal Register** (69 FR 71873) on December 10, 2004. The purpose of the meeting was to advise the public of TTB's plans for implementation of the certification requirements and to answer questions from the public regarding these provisions. TTB also encouraged, both at the meeting and in Notice No. 26, the submission of written comments regarding its implementation plans. The public comment period ended January 15, 2005.

TTB received eleven comments regarding implementation of the new requirements. Comments were received from: Allied Domecq, on behalf of Allied Domecq Wines USA; the government of Australia; the California Fine Wine Alliancé; the government of Canada; the Comite Europeen des Entreprises Vins; the Distilled Spirits Council of the United States; the Federation des Exportateurs de Vins et Spiritueux de France; Green Mountain Beverage; Kalik Lewin, on behalf of the Wine Institute; the National Association of Beverage Importers, Inc.; and the government of New Zealand.

TTB took into consideration the comments of the parties mentioned above in drafting this document. The principal points made by the comment submitters, TTB's responses regarding

those comments, and TTB's observations on other aspects of the implementing regulatory texts are set forth below.

The regulatory text to implement the section 2002 statutory changes is set forth in this document as a new § 27.140 within subpart I (Importer's Records and Reports) of part 27 of the TTB regulations, which concerns the importation of distilled spirits, wines, and beer.

The document includes conforming cross-reference changes to §§ 24.301 and 24.302 of the TTB regulations (27 CFR 24.301 and 24.302), which concern records applicable to imported bulk still and effervescent wines received in bond.

The document also includes a new requirement in our regulations promulgated under the labeling provisions of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e). This new provision is in a new paragraph (b) of 27 CFR 4.45, and provides that importers must submit copies of certifications to TTB for use in enforcing the labeling provisions of the FAA Act. These certifications will be made available to the public on the TTB Web site.

1. Filing of Certifications

During the public meeting, TTB stated its intention not to require presentation of the certification as part of the customs entry process. TTB took this position based on the view that compliance with the statutory requirement could be adequately assured if importers simply maintain the certifications in their records where TTB officers can inspect them as may be necessary.

Most of the comment submitters addressing this issue agreed with TTB's position, stating that it will be less burdensome to importers. However, two of them dissented. One contended that the statute requires importers to provide the certification, or at least proof that the certification is on file, to U.S. Customs and Border Protection at the time of importation. The second dissenting comment submitter argued that importers should file certifications with TTB, which would then maintain them in a database that would be available to other importers. On the other hand, another commenter urged TTB to confirm that the affirmed laboratory analyses would be treated as confidential information, asserting that such analyses would necessarily include sensitive proprietary information.

TTB does not agree that the statutory language requires the certification to be presented as part of the customs entry process. Instead, we believe that the requirements of the amended IRC provision will be satisfied if importers maintain copies of the certifications in their records. Moreover, noting that the statute requires that the Secretary have ''on file'' or be ''provided with'' a certification, we believe the ''provided with'' standard is satisfied by a retention requirement because, under 27 CFR 27.137, any record required under part 27 must be retained and made available to TTB for inspection. Finally, we believe the record retention approach will be least burdensome for both the U.S. Government and the industry.

However, as stated above, we have decided to require importers to submit a copy of the certification to TTB under regulations promulgated under the FAA Act. Section 105(e) of the FAA Act, 27 U.S.C. 205(e), authorizes TTB, as the delegate of the Secretary of the Treasury, to issue regulations that will ensure that alcohol beverage labels provide adequate information to consumers as to the identity and quality of the product. Pursuant to this authority, we have issued regulations requiring both domestic and imported wines to be labeled with information regarding the class and type designation of the product. *See* 27 CFR part 4, subparts C and D. These regulations also set forth rules regarding the blending and cellar treatment of wine. *See* 27 CFR 4.22.

An importer's inability to provide a certification regarding proper cellar treatment may indicate that the wine has been treated in a fashion that would change the class and type designation under the pertinent regulations in part 4. Moreover, Congress by amending section 5382 has indicated an increased concern with such treatment. Consequently, TTB will also require importers to submit certifications of natural wine as part of the label approval process and TTB may use such information for purposes of verifying the appropriate class and type designation of the wine under the labeling provisions of part 4.

While TTB is requiring that the certification be submitted as part of the label approval process, labels for wines for which a certification is not yet available will be provisionally approved pending submission of the certification prior to the time of release from Customs custody. Certifications that are submitted subsequent to provisional approval must include the label approval number. Certifications submitted subsequent to provisional approval of the label approval should be submitted to the Director, Knowledge Management Staff, with the mailing address as Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Attention: Wine Certification Docket, Washington, DC 20220.

Furthermore, an importer may rely on a certificate of label approval approved prior to the effective date of this regulatory change. In such a case, the importer consequently would not be required to obtain a new certificate of label approval, but must instead submit the required certification to the Director, Knowledge Management Staff, at the address indicated above before the wine in question is released from Customs custody.

The temporary rule also provides that certifications submitted under section § 4.45 shall be made available to the public on the TTB Internet Web site at *www.ttb.gov*, in the same way that approved labels are made available to the public. Consistent with the objectives of the FAA Act, TTB believes that making this information available to the public provides assurance to consumers that the wine was produced in accordance with acceptable practices. However, in order to minimize implementation time and costs, certifications will be displayed on a separate Web page. The certifications on the Web will be indexed to the label approval by the label approval number.

We do not agree with the comment that suggested that the affirmed laboratory analyses necessarily included sensitive proprietary information that should be kept confidential. Unlike formulas, which include sensitive and confidential data about the formulation of products, the laboratory analysis merely sets out in summary form the percentage alcohol by volume, the total sulphur dioxide content (ppm), and the volatile acidity of the product. This is information that could be obtained by anyone who bought a bottle of the product in the marketplace and submitted the sample to a private laboratory for analysis.

In many cases, the alcohol content of the wine is already on the label. TTB does not believe that the information included in the analysis is confidential or proprietary, and thus we have concluded that it may be made available to the public.

Several comment submitters asked if the importer must obtain a certification for each shipment, or merely for the initial shipment of a specific wine. Others proposed that once one importer has imported a specific wine, other importers should be able to use the same certification.

TTB believes if an importer has an original or copy of the certification in his or her possession at the time of the initial importation the statutory requirement will be met for multiple shipments of the same wine (that is, wine of the same brand, class or type, producer, and cellar treatment). Thus, the importer could import additional shipments of the same wine without obtaining a new certification, as long as the certification for the initial shipment is maintained in his or her records and continues to accurately apply to the wine in the subsequent shipments. In addition, because importers may use either an original or copy of a certification, different importers may use copies of the same certification.

2. Wines Produced Under an International Agreement

Some comment submitters requested clarification on the scope of the provision regarding wine produced and imported subject to an international agreement or treaty. In response, the TTB position is that wines fall under this provision if they are imported from a country that has ratified an agreement that provides for acceptance by the United States of the enological practices of the exporting country. On the other hand, wines covered by agreements that do not provide for acceptance of enological practices will not qualify for inclusion under this provision.

The comments also revealed some confusion over whether TTB would require some type of government certification for wines falling under this provision. In response, TTB notes that while the statute does mention a certification in this context, it refers only to a ''certification, if any, as may be required by an international agreement or treaty under paragraph (1)(B).'' TTB does not believe that it is necessary to require retention of a certification if the terms of such an international agreement or treaty do not require a certification, because the existence of the agreement or treaty is sufficient for purposes of verification of the statutory standard by TTB. However, a different approach appears to be necessary under the terms of the statute if the international agreement or treaty provides for a certification. Accordingly, in this case the regulatory text requires the importer to have only the certification required under the agreement or treaty.

3. Importers Affiliated With a U.S. Winery

A number of commenters requested clarification of what qualifies as an ''affiliate,'' while others stated that the statutory definition of affiliate is clear and does not need explanation. One commenter interpreted this provision as permitting an importer in this category to self-certify only wines produced by an affiliated winery. Another commenter questioned whether TTB would allow self-certification by an importer when the importer is controlled by the winery rather than the other way around.

TTB has included in the regulatory text a definition of ''affiliate'' that includes the terms of section 117(a)(4) of the Federal Alcohol Administration (FAA) Act as well as the additional definitional language added by section 2002 of the Act. The following points are noted regarding this definition:

- The language added by section 2002 of the Act is included with the first part of the FAA Act definition because it appears to be more relevant there.
- We have added the word ''controlling'' before the words ''ownership interest'' to ensure consistency with the ''control'' concept in the existing FAA Act definition. In this regard, we do not believe that Congress intended to create an ambiguity by having a definition that contradicts its own terms.

TTB believes that the statute allows an importer that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary to self-certify any natural wine he or she imports, not just wine produced by its affiliated winery. With regard to the other comment, TTB believes that the statutory language does not provide for self-certification when the winery controls the importer.

4. Definition of Natural Wine

As the new requirements apply only to ''natural'' wine, a number of comment submitters requested that TTB clarify the definition of natural wine. For example, some commenters questioned whether non-grape wines, wines under 7 percent alcohol by volume, or wines that are not ''standard'' wines are included in the definition.

TTB has included in the § 27.140 text the definition of natural wine currently found in 27 CFR 24.10, which is based on the definition contained in section 5381 of the IRC. Although Congress had the opportunity to amend the definition of natural wine for purposes of the amendment made by section 2002 of the Act, it did not do so. Accordingly, the current definition of natural wine, which includes some wines made from fruits other than grapes as well as wines under 7 percent alcohol by volume, applies in this regulatory context. Whether a wine falls within the definition of ''natural'' wine or not depends on how it is produced. Because the definition of ''standard'' wine under section 24.10 includes ''natural wine,'' a wine that is not a ''standard wine'' cannot be a ''natural wine.''

Two comment submitters asked if the alcohol content limitations in the definition of natural wine refer to ''acquired'' or ''actual'' alcohol, or to ''total'' alcohol (which includes the alcohol equivalent of residual sugar contained in the wine). Consistent with the approach taken throughout the U.S. wine regulations, the alcohol content limitations contained in the definition of natural wine have reference to the wine's ''actual'' alcohol by volume content, which does not include the alcohol equivalent of the residual sugar.

5. Certifying Government Agencies and Laboratories

A few comment submitters suggested that TTB allow the required government certification to be from a quasi-governmental organization having a regulatory role in the country of origin. They pointed out that in some countries such organizations have significant regulatory authority. They also suggested that TTB should accept analyses not just from government laboratories, but also from laboratories that have been certified by the country of origin to conduct the analyses.

TTB is aware of the fact that quasi-governmental organizations play a significant role in regulating some countries' wine industries. For this reason, TTB will accept the required certification from either a governmental or government-approved entity, provided that the entity has oversight or control over enological practices in the producing country under the laws of the producing country. Likewise, TTB understands that government laboratories in some countries may not easily be able to handle the additional work required by this certification requirement. TTB will therefore accept a laboratory analysis conducted by a laboratory certified by the government of the producing country.

TTB expects that each country exporting wine to the United States that is subject to the government certification and laboratory analysis requirements of the statute will make available to TTB and the general public a list of its governmental or government-approved certifying entities and a list of its government or government-certified laboratories. To assist importers in verifying that the certification and laboratory analysis are from a proper source, TTB will maintain a list

containing all such available information on its Internet Web site.

6. Other Issues

In addition to the points made above in connection with the submitted comments, TTB notes the following in regard to the new § 27.140 text:

1. The definition of ''produced'' refers to removal from the fermenter. TTB believes that this constitutes an objective standard that identifies a specific, definable point in the wine production process.

2. The definition of ''proper cellar treatment'' includes language regarding international agreements and treaties, to reflect the effect of the addition of new paragraph (1)(B) to section 5382(a).

3. TTB must be able to determine if wine imported after December 31, 2004, was produced on or before that date, particularly since significant quantities of wine produced both before and after the statutory cutoff date will be imported. However, TTB also recognizes that, as time goes on, the proportion of imported wine that consists of post-2004 production will increase, with a consequent increase in the recordkeeping burden on importers. In order to reduce the potential burden on importers, the regulatory text merely requires the maintenance of records (which the importer would already have in the normal course of business) to show that the wine was produced before December 31, 2004.

Paperwork Reduction Act

The collections of information contained in this temporary rule have been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and, pending the receipt of public comments, approved under OMB control number 1513–0119. 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.

The collections of information in this regulation are in § 4.45 and § 27.140. The first information collection involves consumer information under the Federal Alcohol Administration Act. The second information collection is required by the Internal Revenue Code of 1986 in connection with the importation of wine from foreign countries. Failure to provide the required information may result in administrative sanctions against the importer. The likely respondents are individuals and business or other for-profit institutions, including partnership, associations, and corporations.

- Estimated total annual reporting and/or recordkeeping burden: 6,600 hours.
- Estimated average annual burden per respondent/recordkeeper: 1.65 hours.
- Estimated number of respondents and/or recordkeeping: 4,000.
- Estimated annual number of responses: 20,000.

Please refer to the related notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for the procedures for submitting comments on the collection of information.

Regulatory Flexibility Act

For applicability of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, we will submit this temporary rule to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the temporary regulations.

Executive Order 12866

We have determined that this temporary rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Requirements

With respect to the provisions of these regulations that implement section 5382 of the Internal Revenue Code, it has been determined that sections 553(b) and (d)(3) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply. With respect to section 5382 and the provisions of these regulations issued under the authority of the Federal Alcohol Administration Act, it has been determined, pursuant to 5 U.S.C. 553(b)(B) and (d), that good cause exists to issue these regulations without prior notice and public procedure, and without a delayed effective date. Because foreign wine subject to these regulations will begin entering the United States shortly, it is impracticable and contrary to the public interest to issue these regulations for prior notice and comment, and with a delayed effective date.

Although we are not required to issue a prior notice of proposed rulemaking, we are soliciting comments from all interested parties on the implementation of these new requirements through a concurrent notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of this document was Jennifer K. Berry, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau. However, other personnel participated in its development.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Amendments to the Regulations

n For the reasons discussed in the preamble, TTB amends 27 CFR parts 4, 24, and 27 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

n 2. Section 4.45 is amended by revising the section heading, designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 4.45 Certificates of origin, identity and proper cellar treatment.

(a) *Origin and identity.* * * *

(b) *Certification of proper cellar treatment of natural wine*—(1) *General.* An importer of wine may be required to have in his or her possession at the time of release of the wine from customs custody a certification or may have to

comply with other conditions prescribed in § 27.140 of this chapter regarding proper cellar treatment. If imported wine requires a certification under § 27.140, the importer must provide a copy of that certification to TTB as follows:

(i) The importer must attach a copy of the certification to the application for a certificate of label approval for the wine in question submitted under § 13.21 of this chapter; or

(ii) If a certification for the wine in question was not available when the importer submitted the application for label approval, the importer must submit a copy of the certification to the appropriate TTB officer prior to release from customs custody of the first shipment of the wine.

(2) *Validity of certification.* A certification submitted under paragraph (b)(1) of this section is valid as long as the wine is of the same brand and class or type, was made by the same producer, was subjected to the same cellar treatment, and conforms to the statements made on the certification. Accordingly, if the cellar treatment of the wine changes and a new certification under § 27.140 is required, an importer is required to submit a new certification for the wine even though it is subject to the same label approval.

(3) *Use of certification.* TTB may use the information from a certification for purposes of verifying the appropriate class and type designation of the wine under the labeling provisions of this part. TTB will make certifications submitted under paragraph (b)(1) of this section available to the public on the TTB Internet Web site at *www.ttb.gov.*

PART 24—WINE

n 3. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

n 4. Section 24.301 is amended by removing the word ''and'' at the end of paragraph (i), removing the period at the end of paragraph (j) and adding, in its place, a semicolon followed by the word ''and'', and adding a new paragraph (k) to read as follows:

§ 24.301 Bulk still wine record.

* * * * *

(k) If the proprietor is an importer of wine to which the provisions of § 27.140 of this chapter apply, any certification or other records required at the time of release from customs custody under that section.

n 5. Section 24.302 is amended by removing the word ''and'' at the end of paragraph (h), removing the period at the end of paragraph (i) and adding, in its place, a semicolon followed by the word ''and'', and adding a new paragraph (j) to read as follows:

§ 24.302 Effervescent wine record.

* * * * *

(j) If the proprietor is an importer of wine to which the provisions of § 27.140 of this chapter apply, any certification or other records required at the time of release from customs custody under that section.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

n 6. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6302, 7805.

n 7. Subpart I, Importer's Records and Reports, is amended by adding a new § 27.140 to read as follows:

§ 27.140 Certification requirements for wine.

(a) *Definitions.* When used in this section, the following terms have the meaning indicated:

Affiliate means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons, and includes a winery's parent or subsidiary or any other entity in which the winery's parent or subsidiary has a controlling ownership interest. An affiliate also means any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

Importer means any person importing wine who must obtain a permit as provided in § 27.55.

Natural wine means the product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any cellar treatment authorized by subparts F and L of part 24 of this chapter and containing not more than 21 percent by weight (21 degrees Brix de-alcoholized wine) of total solids.

Produced, when used with reference to wine, means removed from the fermenter.

Proper cellar treatment means a production practice or procedure authorized by subparts F and L of part 24 of this chapter and, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

(b) *Certification*—(1) *General.* Except as otherwise provided in paragraph (b)(2) of this section, an importer of natural wine must have an original or copy of a certification from the producing country stating that the practices and procedures used to produce the imported wine constitute proper cellar treatment. The certification:

(i) Must be from a governmental or government-approved entity having oversight or control over enological practices in the producing country under the laws of that country;

(ii) Must include the results of a laboratory analysis of the wine conducted either by a government laboratory of the producing country or by a laboratory certified by the government of the producing country; and

(iii) Must be in the possession of the importer at the time of release of the wine from customs custody and may cover multiple importations provided that the wine in each case is of the same brand and class or type, was made by the same producer, was subjected to the same cellar treatment, and conforms to the statements made on the certification.

(2) *Alternative certifications and exemptions*—(i) The following are alternatives to the producing country certification and laboratory analysis requirement described in paragraph (b)(1) of this section:

(A) In the case of natural wine produced and imported subject to an international agreement or treaty specifying that the practices and procedures used to produce the wine are acceptable to the United States, no producing country certification and laboratory analysis is required, unless that international agreement or treaty requires a certification, in which case the importer must have in his or her possession at the time of release of the wine from customs custody an original or copy of that certification.

(B) If an importer of natural wine or its affiliate owns or controls a winery operating under a basic permit issued under part 1 of this chapter, in lieu of a producing country certification and laboratory analysis, the importer may

self-certify that the practices and procedures used to produce the wine constitute proper cellar treatment. The self-certification must be either in the format set forth in paragraph (c) of this section with blocks 1 through 4 completed or in an alternative format that sets forth the same information, and it must be in the possession of the importer at the time of release of the wine from customs custody. In the case of self-certification the importer also must have at the time of release from customs custody records to establish that the requirements for self-certification are met.

(ii) The following are exempt from any certification requirement under this section:

(A) Natural wine produced before January 1, 2005. However, in this case, the importer must have in his or her possession at the time of release of the wine from customs custody records to establish that the wine was produced before January 1, 2005.

(B) Importations of natural wine that are of a personal, non-commercial nature. Examples of non-commercial importations include importations by travelers, gift shipments between individuals, and importations by diplomats for embassy or consular use.

(C) Importations of natural wine that constitute commercial samples. Commercial samples include sales samples, samples for trade shows, and samples for laboratory analysis.

(D) Imported natural wine held on board international passenger carriers, such as cruise ships or airliners.

(c) *Form*. The format for certification referred to in paragraph (b) of this section is the following:

BILLING CODE 4810–31–P

Certification of Natural Wine Imported into the United States

1. Producer name and address:
2. Description of wine:
3. Check applicable box: a. ☐ Producing country certification and laboratory analysis results completed below. b. ☐ Self-certification by importer completed below. An importer must be able to demonstrate the nature of the ownership or control as well as the nature of any affiliation.
4. Certification - I certify that the practices and procedures used to produce the wine described in block 2 constitute proper cellar treatment under 26 U.S.C. 5382 and 27 CFR 27.140. Name and address of certifying entity: Authorized signature: Name (print or type): Date (DD/MM/YY):
5. Analysis for wine described in block 2 Percentage alcohol (actual) by volume: Signature: Total sulphur dioxide (ppm): Name (print or type): Volatile acidity (grams per 100 mL): Date (DD/MM/YY): Name and address of laboratory:
6. TTB label approval identification number (required if certification is submitted subsequent to label approval):

BILLING CODE 4810–31–C

(d) *Preparation of Certification.* The following rules apply for the completion of the certification set forth in paragraph (c) of this section:

(1) Block 1 must state the legal name and address (including country) of the producer of the wine.

(2) Block 2 must include a complete description of the wine, including its brand name, year of production, class or type, and country of origin.

(3) The importer must check the applicable box in block 3:

(i) The importer must check box 3a and ensure that blocks 4 and 5 are completed if no alternative certification applies to the wine under paragraph (b)(2)(i) of this section.

(ii) If paragraph (b)(2)(i)(B) applies to the wine, the importer must check box 3b and complete the certification in block 4.

(4) If the certification is submitted subsequent to approval of a label, the importer must complete block 6 by including the TTB identification number from the certificate of label approval, TTB Form 5100.31.

Signed: August 4, 2005.

John J. Manfreda,

Administrator.

Approved: August 4, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 05–16772 Filed 8–23–05; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Regulation 340–21]

Privacy Act; Implementation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is exempting those records contained in A0195–2c USACIDC DoD, entitled ''DoD Criminal Investigation Task Force (CITF) Files'' when the records are compiled in furtherance of activities pertaining to the enforcement of criminal laws.

DATES: Effective August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6503.

SUPPLEMENTARY INFORMATION: The proposed rule was published on February 25, 2005, at 70 FR 9261–9262. One public comment was received which has prompted a change in the final rule. The rule, as changed, is being adopted as final.

The commenter expressed two principal concerns. First, the commenter observes that the Department is attempting to establish a new exemption, a prerogative that only Congress possesses. We disagree. As provided by law, the Department may promulgate a rule exempting a system of records from provisions of the Act if the system of records is maintained by a Component of the Agency that performs as its principal function the enforcement of criminal laws. Because the principal function of the DoD Criminal Investigation Task Force is law enforcement (*i.e.*, criminal investigations into acts of terrorism and war crimes), the Department is authorized to adopt an exemption rule that will serve to preserve the integrity of the investigative process. And second, the commenter observes that adoption of the exemption will enable the Department to shield documents that heretofore were available to the public, thereby potentially resulting in the denial of access to individuals who, for example, are innocent members of the Armed Forces or individuals who have witnessed an act of terrorism or war crime. We disagree that the rule will deny access to all documents. As provided by law, the rule provides a basis for the Department to exempt certain records from the access provisions of the Act. It does not act to suspend any rights the individual otherwise may be entitled to under the law. Moreover, to the extent the documents may be disclosed without prejudicing the investigative process, the rule does not bar release. To eliminate any potential ambiguity that may exist regarding release of nonexempt documents from the system of records, the rule has been revised to make clear that only those records, the disclosure of which would have a deleterious impact on the investigative process, are shielded by the rule.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been certified that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been certified that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

Dated: August 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

List of Subjects in 32 CFR Part 505

Privacy.

n Accordingly, 32 CFR part 505 is to be amended to read as follows:

PART 505—ARMY PRIVACY ACT PROGRAM

n 1. The authority citation for 32 CFR part 505 continues to read as follows:

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

n 2. In § 505.5, paragraph (e)(20) is added to read as follows:

§ 505.5 Exemptions.

* * * * *

(e) Exempt Army records. * * *

* * * * *

(20) *System identifier and name:* A0195–2c USACIDC DoD, DoD Criminal Investigation Task Force (CITF) Files.

(i) *Exemption:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(K) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis necessary for effective law enforcement.

* * * * *

[FR Doc. 05–16775 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–05–101]

RIN 1625–AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Port of Baltimore, Maryland during the movement of the historic Sloop-of-War U.S.S. CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during the dead ship tow of the vessel from its berth, to the Fort McHenry Angle on the Patapsco River, and return. This action will restrict vessel traffic in portions of Baltimore's Inner Harbor, the Northwest Harbor, and the Patapsco River.

DATES: This rule is effective from 2 p.m. to 7 p.m. local time on September 9, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–05–101 and are available for inspection or copying at Commander, U.S. Coast Guard Sector, Waterways Management Division, 2401 Hawkins Point Road, Baltimore, Maryland 21226, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector

Baltimore, Waterways Management Division, at telephone number (410) 576–2674.

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. Publishing an NPRM is impracticable due to the unique nature of the rule and the fast-approaching effective date. The historic Sloop-of-War U.S.S. CONSTELLATION will be towed ''dead ship,'' which means that the vessel will be underway without the benefit of mechanical or sail propulsion. Therefore, it is imperative that there be a clear transit route and a safe buffer zone around the U.S.S. CONSTELLATION and the vessels towing her.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard expects a large recreational boating fleet to view the turn-around of the U.S.S. CONSTELLATION. To provide necessary safety measures to protect mariners against potential hazards associated with the turn-around, it is in the public interest to have a safety zone in place for the event which is scheduled to occur in less than 30 days.

Background and Purpose

On September 9, 2005, the U.S.S. CONSTELLATION Museum will conduct a turn-around of the historic Sloop-of-War U.S.S. CONSTELLATION in Baltimore, Maryland. The planned event includes the ''dead ship'' tow of the U.S.S. CONSTELLATION from its berth in Baltimore's Inner Harbor to the Fort McHenry Angle of the Patapsco River, a tug assisted turn-around of the vessel, then a ''dead ship'' tow return to its berth in Baltimore's Inner Harbor. In addition, an onboard salute with navy pattern cannon while off Fort McHenry National Monument and Historic Site is expected.

The Coast Guard anticipates a large recreational boating fleet during this event, scheduled on a late Friday afternoon during summer in Baltimore, Maryland. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating in the specified areas of the Port of Baltimore.

Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

Discussion of Rule

The historic Sloop-of-War U.S.S. CONSTELLATION is scheduled to conduct a ''turn-around'' on September 9, 2005. The U.S.S. CONSTELLATION is scheduled to be towed from its berth, to Fort McHenry, and return, along a route of approximately 2.5 nautical miles (5 nautical miles total) that includes specified waters of Baltimore's Inner Harbor, the Northwest Harbor and the Patapsco River.

The safety of dead ship tow participants requires that spectator craft be kept at a safe distance from the intended route during this evolution. The Coast Guard is establishing a temporary moving safety zone around the U.S.S. CONSTELLATION ''turn-around'' participants on September 9, 2005, to ensure the safety of participants and spectators immediately prior to, during, and following the dead ship tow. The safety zone will extend 200 yards ahead of or 100 yards outboard or aft of the historic Sloop-of-War U.S.S. CONSTELLATION.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the limited size of the zone, the minimal time that vessels will be restricted from the zone, and that vessels may safely transit a portion of Baltimore's Inner Harbor, the Northwest Harbor, and the Patapsco River, around the zone. In addition, the zone will be well publicized to allow mariners to make alternative plans for transiting the affected area, and vessels that may need to enter the zone may request permission on a case-by-case basis from the Captain of the Port (COTP) Baltimore, Maryland.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or anchor in portions of Baltimore's Inner Harbor, the Northwest Harbor, and the Patapsco River in the Port of Baltimore, Maryland. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels, which are more likely to be small entities, may transit around the zones and may request permission from the COTP Baltimore on a case-by-case basis to enter the zone.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction, from further environmental documentation. This rule established a safety zone.

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 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

n 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, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

n 2. Add § 165.T05–101 to read as follows:

§ 165.T05–101 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) *Definitions.* For the purposes of this section—

Captain of the Port, Baltimore, Maryland means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

U.S.S. CONSTELLATION ''turn-around'' participants means the U.S.S. CONSTELLATION, its support craft and the accompanying towing vessels.

(b) *Location.* The following area is a moving safety zone: all waters within 200 yards ahead of or 100 yards outboard or aft of the historic Sloop-of-War U.S.S. CONSTELLATION, while operating in Baltimore's Inner Harbor, the Northwest Harbor and the Patapsco River, Baltimore, Maryland.

(c) *Regulations.* (1) The general regulations governing safety zones, found in Sec. 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) With the exception of U.S.S. CONSTELLATION ''turn-around'' participants, entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port, Baltimore, Maryland to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693 or on Marine Band Radio VHF Channel 16 (156.8 MHz). The Coast Guard vessels enforcing this

section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) *Effective period.* This section will be enforced from 2 p.m. to 7 p.m. local time on September 9, 2005.

Dated: August 11, 2005.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 05–16792 Filed 8–23–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD11–05–006]

RIN 1625–AA11

Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel as a Regulated Navigation Area (RNA) for certain commercial vessels transporting oil or hazardous material as cargo. This action is necessary to reduce significant hazards to subject vessels, the port and the public that are present during periods of poor weather conditions. The RNA codifies existing Captain of the Port San Francisco Bay (COTP) policies for vessels transporting oil or certain dangerous cargoes in bulk within Humboldt Bay.

DATES: This rule is effective starting at 12:01 a.m. on September 23, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket CGD11–05–006 and are available for inspection or copying at the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ian Callander, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, and (510) 437–3401.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 13, 2005, we published a Notice of Proposed Rule Making (NPRM) entitled, Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, CA, in the **Federal Register** (70 FR 25511). We received one comment on the proposed rule. No public meeting was requested, and none was held.

Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Sector Commander will enforce this regulation and has the authority, as delegated by the Captain of the Port, San Francisco Bay, to take steps necessary to ensure the safe transit of vessels in Humboldt Bay. The Sector Commander can enlist the aid and cooperation of any Federal, State, county, and municipal agency to assist in the enforcement of the regulation.

Background and Purpose

Because Humboldt Bay has a breaking bar, a narrow entrance channel, and no general anchorages within the bay, transits of this area present significant hazards to vessels carrying oil or hazardous material as cargo. The potential hazards to the subject vessels and the consequences of casualties involving commercial vessels carrying oil or hazardous material as cargo warrant special procedures to reduce the potential for a collision or grounding and any subsequent release of a cargo covered by this regulation.

In this particular rulemaking, the Coast Guard designates an area around the Humboldt Bay Bar as an RNA for the following purposes: (1) To establish the Coast Guard's authority to prohibit vessels carrying oil or hazardous material as cargo from crossing the bar during unsafe conditions, (2) to establish waiver, notice, and vessel escort policies, and (3) to delegate the authority for enforcing these regulations to the Sector/Air Station Humboldt Bay Commander.

Discussion of Comments and Changes

We received one comment on the proposed rule. No public hearing was requested, and none was held. The comment we received noted that Group Humboldt Bay would be stood-down and incorporated into Sector/Air Station Humboldt Bay prior to the publishing of this final rule. 'Group Humboldt Bay' and 'Group Commander' have been replaced with 'Sector/Air Station Humboldt Bay' and 'Sector Commander' respectively in this final rule. Because this change does not have a substantive impact on the regulation, we feel that making this change does not warrant an extension to the public comment period provided by the 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation would not be significant for the following reasons: (1) Very few vessels carrying oil or certain dangerous cargoes transit the Humboldt Bay area, and (2) those vessels carrying oil or hazardous material as cargo have been complying with the COTP advisories that established the same procedures that are established in this regulation. Therefore, this rule would be a continuation of the already established policy of monitoring the entrance and departure of the above-mentioned

vessels. In addition, vessels will continue to be allowed to enter on a case-by-case basis with prior permission of the Sector Commander or his designated representative.

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 is not expected to have a significant economic impact on a substantial number of small entities. The effect of this rule on small entities would not be significant for the following reasons: (1) Very few vessels carrying oil or hazardous material as cargo transit the Humboldt Bay area, and (2) those vessels carrying oil or hazardous material as cargo have been complying with the COTP advisories that established the same procedures that are being established by this regulation. In addition, the regulation would still allow the regulated vessels to complete transits of the bar under favorable weather conditions, and the Sector Commander would continue to grant entrance waivers on a case-by-case basis.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–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 proposed 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

n 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.

n 2. Add § 165.1195, to read as follows:

§ 165.1195 Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, California.

(a) *Location.* The Regulated Navigation Area (RNA) includes all navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, Humboldt Bay, California.

(b) *Definitions.* As used in this section—

COTP means the Captain of the Port as defined in Title 33, Code of Federal Regulations, Section 1.01–30 and 3.55–20.

Sector means Coast Guard Sector/Air Station Humboldt Bay.

Sector Commander means the Commanding Officer of Coast Guard Sector/Air Station Humboldt Bay.

Hazardous Material means any of the materials or substances listed in 46 CFR 153.40.

Humboldt Bay Area means the area described in the location section of this regulation.

Oil means oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Station means Coast Guard Station Humboldt Bay.

Tank Vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

(c) *Applicability.* These regulations apply to the owners and operators of tank vessels transporting oil or hazardous material as cargo within the Humboldt Bay Area.

(d) *Regulations.* (1) In addition to the arrival and departure notification requirements listed in title 33 CFR, part 160, Ports and Waterways Safety—General, subpart C—Notifications of ''Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes'', the owner, master, agent or person in charge of a vessel to which this notice applies shall obtain permission to cross within four hours of crossing the Humboldt Bay Bar. Between 6:30 a.m. and 10 p.m., notification/requests for permission can be made to Station Humboldt Bay on VHF–FM Channel 16, or at (707) 443–2213. If between 10 p.m. and 6:30 a.m., or if unable to reach the Station, notification/requests for permission can be made directly to Sector/Air Station Humboldt Bay on VHF–FM Channel 16 or at (707) 839–6113.

(2) Permission for a bar crossing by vessels or towing vessels and their tows to which this regulation applies is dependent on environmental and safety factors, including but not limited to: Sea state, winds, visibility, size and type of vessel or tow, wave period, time of day/night, and tidal currents. The final decision to close the bar rests with Humboldt Bay Sector Commander or his designated representative. At a minimum, Humboldt Bay Bar Channel crossings by vessels subject to this advisory will generally not be permitted unless all of the following conditions exist: Proper permission to cross has been received, sea conditions at the bar are less than 6 feet, winds at the bar are less than 30 knots, the transit will take place during daylight hours, the vessel has only a single tow or no tow, the visibility at the bar is greater than 1,000 yards, and the vessel and tow are in proper operating condition.

(3) If the bar is closed to vessels to which this regulation applies, waiver requests will be accepted within four hours of crossing the entrance channel. If the waiver request is made between 6:30 a.m. and 10 p.m., the request should be made to Station Humboldt Bay on VHF–FM Channel 16, or at (707) 443–2213. If between 10 p.m. and 6:30 a.m., or if unable to reach the Station, the request can be made directly to Sector/Air Station Humboldt Bay on VHF–FM Channel 16 or at (707) 839–6113. Waiver requests must be made by the vessel master and must provide the following: A description of the proposed operation, the conditions for which the waiver is requested, the reasons for requesting the waiver, the reasons that the requester believes the proposed operation can be accomplished safely, and a callback phone number. The Station or Sector Watchstander receiving the request will brief the Officer in Charge of the Station who will then brief the Sector Commander. The authority to grant waivers rests with the Sector Commander or his designated representative.

(4) In addition to the requirements in paragraphs (d)(1)–(3) of this section, vessels transporting liquefied hazardous gases or compressed hazardous gases in bulk as cargo into or out of Humboldt Bay are required to be aided by two assist tugs. If the vessel carrying the gases is towed, the assist tug requirement is in addition to the towing tug. The assist tugs shall escort the vessel through its transit and must be stationed so as to provide immediate assistance in response to the loss of power or steering of the cargo vessel, its towing tug, or loss of control over the tow.

(5) Vessels to which this regulation applies may be required by the Sector Commander or his designated representative to be escorted by a Coast Guard vessel during their transit. In addition, if a vessel master, agent, or pilot has concerns about the safety of a vessel's transit through the Humboldt Bay Entrance Channel, a Coast Guard escort may be requested. Requests for an escort should be directed to Station on VHF–FM channel 16 or at (707) 443–2213 between 6:30 a.m. and 10 p.m., or to Sector on VHF–FM channel 16 or at (707) 839–6113 if between 10 p.m. and 6:30 a.m.

(e) *Enforcement.* Acting as a representative of the Captain of the Port, the Humboldt Bay Sector Commander will enforce this regulation and has the authority to take steps necessary to ensure the safe transit of vessels in Humboldt Bay. The Sector Commander can enlist the aid and cooperation of any Federal, State, county, and municipal agency to assist in the enforcement of the regulation. All persons and vessels shall comply with the instructions of the Sector Commander or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 8, 2005.

K.J. Eldridge,

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

[FR Doc. 05–16794 Filed 8–23–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2003–KY–0001–200410(a); FRL–7958–8]

Approval and Promulgation of Implementation Plans for Kentucky: Regulatory Limit on Potential To Emit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky which incorporates Kentucky rule 401 KAR 52:080 into the Kentucky SIP. The Commonwealth submitted the revision on October 31, 2003. This rule affects sources whose actual emissions are less than 50 percent of the major source threshold whereas the sources' potential to emit (PTE) exceeds the major source threshold. The EPA is also notifying the public that the Agency's conditional approval of Kentucky rule 401 KAR 52:080, as submitted on March 15, 2001, and published on August 15, 2002, is disapproved as of October 15, 2003.

DATES: This direct final rule is effective October 24, 2005 without further notice, unless EPA receives adverse comment by September 23, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2003–KY–0001, by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *notarianni.michele@epa.gov*.

4. Fax: (404) 562–9019.

5. Mail: ''R04–OAR–2003–KY–0001,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. Hand Delivery or Courier. Deliver your comments to: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2003–KY–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the 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 person 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, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9031. E-mail: *notarianni.michele@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Today's Action

The EPA is approving into the Kentucky SIP rule 401 KAR 52:080, ''Regulatory Limit on Potential to Emit,'' state effective October 31, 2003. The EPA is also notifying the public that the Agency's conditional approval of Kentucky rule 401 KAR 52:080, as submitted on March 15, 2001, and published on August 15, 2002, (67 FR 53312), is disapproved as of October 15, 2003. EPA is also correcting references to the SIP submittal date of 401 KAR 52:080 published August 15, 2002, (67 FR 53312) from July 10, 2001, to the correct date of March 15, 2001.

II. Background

On March 15, 2001, the Commonwealth of Kentucky submitted five rules, including rule 401 KAR 52:080, ''Regulatory Limit on Potential to Emit,'' state effective January 15, 2001, to EPA for incorporation into the Kentucky SIP. Rule 401 KAR 52:080 was developed in accordance with a January 25, 1995, EPA memorandum, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act).'' (This January 25, 1995, document is included in the docket for this action.) This memorandum outlines various approaches to establishing

federally-enforceable mechanisms to limit emissions from sources that desire to limit potential emissions to below major source levels.

EPA conditionally approved rule 401 KAR 52:080 based on the Agency's understanding of the rule, documented in a letter dated April 18, 2002, from the Commonwealth, and contingent upon Kentucky making four clarifications to the rule no later than one year from the effective date of the conditional approval action, which was October 15, 2003. See 67 FR 53312, August 15, 2002. (This April 18, 2002, document is included in the docket for today's action.) In a letter dated October 2, 2003, Kentucky notified EPA that the Commonwealth may not be able to submit a revised rule by October 15, 2003, due to possible delays from a statutory revision to Kentucky's promulgation process. Because Kentucky was unable to submit a revised rule 401 KAR 52:080 by October 15, 2003, the conditional approval automatically reverted to a disapproval. Although not required, EPA committed in its conditional approval action to publishing a disapproval action should this occur.

On October 31, 2003, Kentucky submitted a revised rule 401 KAR 52:080, state effective October 31, 2003, for incorporation into the Kentucky SIP. This rule addresses EPA's four requested clarifications and makes other nonsubstantive changes to the January 15, 2001, version. The April 18, 2002, letter from Kentucky stating the Commonwealth's interpretation of the rule's applicability still applies with the exception of the following references: Section 1(a) of the January 15, 2001, state effective referenced rule is renumbered as Section 2(1) in the October 31, 2003, state effective version and the letter's reference to 401 KAR 51:020 should read, ''401 KAR 52:020.'' EPA is also clarifying in this document that Kentucky intended in its letter for the phrases, ''above 50%'' and ''exceed 50%,'' to mean equal to or above 50 percent. The Commonwealth explains in the letter that Section 2(1) does not allow a source currently covered under this rule to increase its actual emissions to 50 percent or above (as clarified previously) a major source threshold under title V of the Clean Air Act by increasing its throughput or hours of operation. If a covered source increased its actual emissions to 50 percent or above (as clarified previously), the source would be immediately subject to title V permitting requirements and would be in violation of 401 KAR 52:080 and the applicable permit regulation (*i.e.*, either 401 KAR 52:020 or 401 KAR 52:030). (See also 67 FR 53312, August 15, 2002.)

III. Rule Clarifications

The EPA is approving rule 401 KAR 52:080 into the Kentucky SIP in its entirety based upon the Commonwealth of Kentucky's interpretation of Section 2(1) of the rule (formerly Section 1(a)) as documented in a letter from the Kentucky Division for Air Quality dated April 18, 2002, and based upon the language of section 3(2)(a).

Kentucky addressed EPA's requested rule clarifications as described below. The clarifications to subsection (3) of section 3 (formerly numbered as section 2(3)) change the actions which trigger noncompliance requirements for a covered source. The previous rule that EPA conditionally approved identified receipt of a notice of violation (NOV) for exceeding the major source threshold as the action which triggered noncompliance with the rule. However, issuance of NOVs is discretionary and thus, a source could potentially operate at 50 percent or above a major source threshold without receiving an NOV to trigger the rule's requirement to submit an application for a title V permit. The clarifications specify any of four actions which could trigger noncompliance with the rule, one of which involves the failure to restrict actual emissions during each consecutive 12 month period of operation after January 1, 1996, to less than 50 percent of the major source thresholds for the title V program. The other actions include failure to comply with notification, recordkeeping, and reporting requirements; failure to allow authorized cabinet representatives to enter the premises as specified; and inability to demonstrate compliance with applicable requirements at the cabinet's request.

Subsection (3)(a) of section 3 is modified to address an issue of enforceability to reflect the Commonwealth's law prohibiting its rules from being more stringent than federal rules. If a source receives an NOV for actual emissions equal to or greater than 50 percent of a major source threshold, section 3(3) sets a 12-month limit, formerly six months, for a source to submit a title V application as required under subsection (a)(1)(i) of section 70.5, ''Permit Applications,'' of 40 CFR part 70, ''State Operating Permit Programs.''

Section 5 (formerly numbered as section 4) is clarified to address reporting exceedances of the 50 percent limit. Section 5(2) requires a source to contact the Kentucky Division for Air Quality if the source plans to make a change that will cause its actual emissions during any consecutive 12-month period of operation to be 50 percent or more of a major source threshold for the title V program. In addition, the source must submit an application for either a title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030. Section 5 requirements previously applied only to modifications or reconstructions; now they must be met if a covered source makes any change, including those that will result in exceedance of 50 percent or more of a major source threshold. Clarifications to section 3(3) described earlier in this document ensure that each incidence of noncompliance with this rule is considered a separate violation until a title V or conditional major permit is issued to the source.

IV. Effects of This Action

Approximately 60–70 sources in Kentucky meet the requirements of and are complying with 401 KAR 52:080. These sources do not have to apply for and receive a title V permit as long as they meet the requirements of this regulation. Additionally, the regulation will apply to similar sources constructed after December 14, 1995, and those that may construct in the future, that meet the applicability requirements of the regulation.

V. Final Action

The EPA is approving into the Kentucky SIP regulation 401 KAR 52:080, which is state effective October 31, 2003, and which was submitted on October 31, 2003, because it is consistent with the requirements of the Clean Air Act and EPA policy. The EPA is also notifying the public that the Agency's conditional approval of Kentucky rule 401 KAR 52:080, as submitted on March 15, 2001, and as published on August 15, 2002, (67 FR 53312), is disapproved as of October 15, 2003. EPA is also correcting references to the SIP submittal date of 401 KAR 52:080 published August 15, 2002, (67 FR 53312) from July 10, 2001, to the correct date of March 15, 2001.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 24, 2005 without further notice unless the

Agency receives adverse comments by September 23, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 24, 2005. and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 12, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

n 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

§ 52.919 [Removed and reserved]

n 2. Section 52.919 is removed and reserved.

n 3. In § 52.920, in paragraph (c), Table 1 is amended:

n a. By adding, in numerical order, a new entry for ''Chapter 52 Permits, Registrations, and Prohibitory Rules,'' and

n b. By adding a new entry under Chapter 52 for 401 KAR 52:080, ''Regulatory limit on potential to emit,'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Chapter 52 Permits, Registrations, and Prohibitory Rules				
401 KAR 52:080	Regulatory limit on potential to emit	10/31/03	8/24/05. [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 05–16804 Filed 8–23–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0011; FRL–7958–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania's or the Commonwealth's) SIP-approved generic RACT regulations. EPA is approving these revisions in the SIP in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on September 23, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0011. All documents in the docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Once in the system, select ''quick search,'' then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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

SUPPLEMENTARY INFORMATION:

I. Background

On February 4, 2003, PADEP submitted a formal SIP revision that consists of source-specific operating permits and/or plan approvals issued by PADEP to establish and require RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations. On March 30, 2005 (70 FR 16115), EPA published a direct final rule (DFR) approving revisions to PADEP-issued operating permits which establish and require RACT for five individual sources. The following table identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Plan approval (PA #) operating permit (OP #)	Source type	''Major source'' pollutant
R.H. Sheppard Co., Inc	York	67–2016	Foundry operations	VOC
Wheatland Tube Co	Mercer	OP 43–182	Steel pipe manufacturing	VOC
Transcontinental Gas Pipeline Corp	Potter	OP–53–0006	Natural gas units	VOC/NO_X
Transcontinental Gas Pipeline Corp	Columbia	OP–19–0004	Natural gas-fired engines	VOC/NO_X
Transcontinental Gas Pipeline Corp	Lycoming	PA–41–0005A	Natural gas-fired engines	VOC/NO_X

An explanation of the CAA's RACT requirements as they apply to the Commonwealth and EPA's rationale for approving these SIP revisions were provided in the DFR and will not be restated here. In accordance with direct final rulemaking procedures, on March 30, 2005 (70 FR 16203), EPA also published a companion notice of proposed rulemaking (NPR) on these SIP revisions inviting interested parties to comment on the DFR. Timely adverse comments were submitted on EPA's March 30, 2005 DFR.

On May 26, 2005 (70 FR 30377), due to receipt of the adverse comments submitted in response to the DFR, EPA published a withdrawal of the DFR. A summary of those comments and EPA's responses are provided in Section II of this document.

II. Summary of Public Comments and EPA Responses

Comment: On April 9, 2005, a citizen submitted adverse comments on EPA's DFR notice approving PADEP's VOC

and NO_X RACT determinations for five individual sources. The commenter states that all regulations for sources of air pollution in Pennsylvania impact the air quality in New Jersey and New York, that Pennsylvania's standards should be set to the highest level available and should be more rigorous than those developed as RACT for these sources. The commenter also states that the word ''reasonable'' [sic] be deleted before ''available'' in the phrase ''reasonably available control technology,'' in order to avoid billions of dollars in costs to taxpayers in litigation over defining what is reasonable. The commenter also accuses EPA of embarking on a campaign to kill Americans with air laden with lead and mercury and that deformed babies are being born.

Response: The rulemaking at issue is limited in scope and addresses the CAA section 182(b)(1) RACT requirements for sources located in the ozone nonattainment area classified as moderate or above. The commenter did not comment specifically on the RACT determinations for the five individual sources and did not submit any supporting technical data or information to support that the standards for the five individual sources do not represent RACT. Rather, the commenter makes broad statements alleging (1) that the regulations should be more stringent than those required under the Act, (2) that the CAA should be amended to remove the term ''reasonable'' [sic] from the CAA phrase ''reasonably available control technology,'' and (3) that the current administration is not sufficiently regulating mercury and lead. These comments are not ''significant comments'' that to which EPA needs to respond. *Whitman* v. *American Trucking Ass'n.*, 531 U.S. 457, n.2 at 471 (2001) (Under the CAA, EPA need only respond to significant comments, *i.e.*, comments relevant to EPA's decision). Mere ''assertions that in the opinions of the commenter the Agency got it wrong,'' are not relevant comments warranting a response. *International Fabricare Inst.* v. *EPA*, 972 F.2d 384, 391 (D.C. Cir. 1992). As to the first comment, that the rules should be more stringent than required under the Act, EPA has no authority to mandate that a State regulate more stringently than required. Under the CAA's bifurcated scheme, the State is responsible for choosing how a source must be regulated for purposes of attaining the NAAQS and EPA's role is limited in reviewing the State's choice to ensure it meets the minimum statutory requirements. Here, as is clear from the commenter's first two points, the commenter is not claiming that the regulations do not meet the statutory minimum, but rather that the statute does not require enough. EPA has no authority to modify the statute, as requested by the commenter nor does EPA have authority to require that the State to regulate more stringently than required by the statute. The CAA is based upon ''cooperative federalism,'' which contemplates that each State will develop its own SIP, and that States retain a large degree of flexibility in choosing which sources to control and to what degree. EPA must approve a State's plan if it meets the ''minimum requirements of the CAA. *Union Elec. Co.* v. *EPA*, 427 U.S. 246, 264–266 (1976).

As to the commenter's third point, the rulemaking at issue creates additional, Federally enforceable controls for VOCs and NO_X. This rulemaking does not address any adverse health effects due to mercury or lead in New Jersey, New York or elsewhere. Comments regarding the ill effects of those pollutants are not relevant to this rulemaking.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on February 4, 2003 to establish and require VOC and NO_X RACT for five major sources pursuant to the Commonwealth's SIP-approved generic RACT regulations.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following

types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named sources.

C. Petitions for Judicial Review

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 October 24, 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 approving source-specific VOC and NO_X RACT requirements for five sources in the Commonwealth of Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 17, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

n 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

n 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries for R.H. Sheppard Co., Inc., Wheatland Tube Company, and three Transcontinental Gas Pipeline Corporations at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
* *	*	*	*	* *	*
R.H. Sheppard Co., Inc	67–2016	York	8/4/95	8/24/05 [Insert page number where the document begins].	52.2020(d)(1)(i)
Wheatland Tube Company	OP 43–182	Mercer	7/26/95	8/24/05 [Insert page number where the document begins].	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	OP–53–0006	Potter	10/13/95	8/24/05 [Insert page number where the document begins].	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	OP–19–0004	Columbia	5/30/95	8/24/05 [Insert page number where the document begins].	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	PA–41–0005A	Lycoming	8/9/95	8/24/05 [Insert page number where the document begins].	52.2020(d)(1)(i)

* * * * *

[FR Doc. 05–16808 Filed 8–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–MN–0002; FRL–7958–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment the EPA is withdrawing the July 1, 2005 (70 FR 38025), direct final rule approving revisions to the sulfur dioxide requirements for Flint Hills Resources, L.P. of Dakota County, Minnesota. In the direct final rule, EPA stated that if adverse comments were submitted by August 1, 2005, the rule would be withdrawn and not take effect. On July 28, 2005, EPA received a comment from the Leech Lake Band of Ojibwe. EPA believes the comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on July 1, 2005 (70 FR 38071). EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 70 FR 38025 on July 1, 2005 is withdrawn as of August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524, e-mail: *rau.matthew@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

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

Dated: August 8, 2005.

Norman R. Niedergang,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

§ 52.1220 [Amended]

Accordingly, the revision of 40 CFR 52.1220(d) (which published in the **Federal Register** on July 1, 2005 at 70

FR 38025) is withdrawn as of August 24, 2005.

[FR Doc. 05–16810 Filed 8–23–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0225; FRL–7731–2]

Myclobutanil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of myclobutanil in or on soybeans. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on soybeans. This regulation establishes a maximum permissible level for residues of myclobutanil in this food commodity. The tolerance will expire and is revoked on December 31, 2009.

DATES: This regulation is effective August 24, 2005. Objections and requests for hearings must be received on or before October 24, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0225. 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: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *Sec-18-Mailbox@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 on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), in or on soybean at 0.05 parts per million (ppm). EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the 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 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....''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Myclobutanil on Soybeans and FFDCA Tolerances

The States of Minnesota and South Dakota, as lead state agencies in what is essentially a ''national'' section 18 request for all soybean growing states, have petitioned the Agency requesting an emergency exemption for myclobutanil to control soybean rust

under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). On November 10, 2004, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS) confirmed the presence of *Phakopsora pachyrhizi*, the pathogen that causes soybean rust, on soybean leaf samples taken from two plots associated with a Louisiana State University research farm. Soybean rust has been designated as a biosecurity threat and therefore it is important that control measures be available for the disease. EPA has authorized under FIFRA section 18 the use of myclobutanil on soybeans for control of soybean rust in Minnesota, South Dakota, and all the other states that have requested an exemption for this use. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of myclobutanil in or on soybeans. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2009, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on soybeans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether myclobutanil meets EPA's registration requirements for use on soybeans or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of myclobutanil by a state for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any state other than those which have been granted exemptions as part of the soybean rust section 18 to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for myclobutanil, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

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 the 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).

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. EPA has sufficient data to assess the hazards of myclobutanil and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of myclobutanil in or on soybeans at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

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

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

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

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

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR MYCLOBUTANIL FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk/Assessment, UF	Hazard and Exposure Based Special FQPA Safety Factor*	Study and Toxicological Effects
Acute dietary (Females 13–50)	NOAEL = 60 milligrams/kilogram/day (mg/kg/day) UF =100 Acute RfD = 0.6 mg/kg/day	FQPA SF = 1X aPAD = acute RfD = 0.6 mg/kg/day	Developmental toxicity study - Rats LOAEL = 200 mg/kg/day based on increased resorptions, decreased litter size
Chronic dietary (All populations)	NOAEL= 2.49 mg/kg/day UF = 100 Chronic RfD = 0.025 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD = 0.025 mg/kg/day	Chronic toxicity/Oncogenicity study - Rats LOAEL = 10 mg/kg/day based on decreased testicular weights and increased testicular atrophy
Short-term (1–30 days) Dermal	NOAEL = 100 mg ai/kg/day	Residential MOE = 100	28–day Dermal toxicity - Rats There were no signs of toxicity at the high dose of 100 mg/kg a.i.
Intermediate-term (1–6 months) Dermal	Oral NOAEL = 10 mg ai/kg/day	Residential MOE = 100	2–Generation reproduction toxicity - Rats LOAEL = 50 mg/kg bw/day based on atrophy of the testes and prostate as well as an increase in the number of stillborn pups and a decrease in pup weight gain during lactation
Long-term Dermal (> 6 months)	Oral NOAEL = 2.49 mg/kg/day	Residential MOE = 100	Chronic toxicity/Carcinogenicity - Rats LOAEL = 10 mg/kg/day based on decreased testicular weights and increased testicular atrophy
Short-term (1–30 Days) Inhalation	Oral NOAEL = 10 mg/kg/day	Residential MOE = 100	2–Generation reproduction toxicity study - Rats LOAEL = 50 mg/kg bw/day based on atrophy of the testes and prostate as well as an increase in the number of stillborn pups and a decrease in pup weight gain during lactation
Intermediate-term (1–6 months) Inhalation	Oral NOAEL = 10 mg/kg/day	Residential MOE = 100	2–Generation reproduction toxicity study - Rats LOAEL = 50 mg/kg bw/day based on atrophy of the testes and prostate as well as an increase in the number of stillborn pups and a decrease in pup weight gain during lactation
Long-term Inhalation (> 6 months)	Oral NOAEL = 2.49 mg/kg/day	Residential MOE = 100	Chronic toxicity/Carcinogenicity - Rats LOAEL = 10 mg/kg/day based on decreased testicular weights and increased testicular atrophy
Cancer	Group E- likely not a human carcinogen		

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

B. Exposure Assessment

1. *Dietary exposure from food and drinking water.* Tolerances are established for combined residues of the fungicide myclobutanil alpha-butyl–alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), ranging from 0.02 ppm on cotton seed and eggs to 25 ppm on grape raisin waste. Time-limited tolerances and tolerances for inadvertent residues have also been established.

In conducting the acute and chronic dietary risk assessments, EPA used the Dietary Exposure Evaluation Model (DEEM™) software. Modeled estimates of drinking water concentrations were directly entered into the exposure model to assess the contribution from drinking water. Risk assessments were conducted by EPA to assess dietary exposures from myclobutanil in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The acute analysis is a conservative Tier 1 assessment based on tolerance-level residues and the assumption of 100% crop treated (PCT) for established and proposed myclobutanil tolerances. DEEM™ default processing factors from DEEM™ (Version 7.76) were used for all processed commodities that do not have individual tolerances. Aggregate acute food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The highest estimate for acute water exposure, 333 parts per billion (ppb), was used in the analysis.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA

1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The chronic analysis is based on partially refined Tier 3 assumptions in that it incorporates estimates of average PCT for some crops, as well as Pesticide Data Program (PDP) monitoring data from apple juice, bananas (not plantains) and milk. The following average PCT information was used: Apples, 40%; apricots, 15%; cherries, 40%; grapes, 45%; nectarines, 20%; peaches, 10%; plums, 15%; and cotton, 1%. One hundred PCT was assumed for all other commodities. DEEM™ default processing factors from DEEM™ (Version 7.76) were used for all processed commodities that do not have individual tolerances. Aggregate chronic food and water exposure was determined by including modeled estimates of drinking water concentrations in the dietary model. The highest estimate for chronic water exposure, 86 ppb, was used in the analysis.

iii. *Cancer*. The Agency has classified myclobutanil as a ''Group E - not likely human carcinogen'' and, therefore, quantification of human cancer risk is not required.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: Apples, 40%; apricots, 15%; cherries, 40%; grapes, 45%; nectarines, 20%; peaches, 10%; plums, 15%; and cotton, 1%.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which myclobutanil may be applied in a particular area.

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

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will generally use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water.

Based on the FIRST and SCI-GROW models, the estimated environmental concentrations (EECs) of myclobutanil for acute exposures are estimated to be 333 ppb for surface water and 3.2 ppb for ground water. The EECs for chronic exposures are estimated to be 86 ppb for surface water and 3.2 ppb for ground water.

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

Myclobutanil is present in numerous end-use products, including those registered for use on turf, roses, flowers, shrubs and trees. Soluble concentrate may be applied with hose-end or trigger bottle sprayers. Small scale lawn

application has the greatest potential for homeowner exposures. Short- and intermediate-term exposures are expected for residential handlers. The Agency has determined that a 50% dermal absorption factor should be applied for intermediate-term assessments. A dermal absorption factor is not required for short-term assessments because the NOAEL used is based upon a 28–day dermal study.

4. *Cumulative effects from substances with a common mechanism of toxicity.* 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 myclobutanil and any other substances and myclobutanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that myclobutanil 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/*.

However, the Agency does have concern about potential toxicity to 1,2,4-triazole and two conjugates, triazolylalanine and triazolyl acetic acid, metabolites common to most of the triazole fungicides. To support the extension of existing parent triazole-derivative fungicide tolerances, EPA conducted an interim human health assessment for aggregate exposure to 1,2,4-triazole. The exposure and risk estimates presented in this assessment are overestimates of actual likely exposures and therefore, should be considered to be highly conservative. Based on this assessment EPA concluded that for all exposure durations and population subgroups, aggregate exposures to 1,2,4-triazole are not expected to exceed EPA's LOC. This assessment is presented in the April 22, 2005 **Federal Register** (70 FR 20821) (FRL–7702–4) notice for another triazole fungicide, tetraconazole. This assessment should be considered interim due to the ongoing series of studies being conducted by the U.S. Triazole Task Force (USTTF). Those studies are designed to provide the Agency with more complete toxicological and residue information for free triazole. Upon completion of the review of these data, EPA will prepare a more sophisticated assessment based on the revised toxicological and exposure data bases.

C. 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 data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

As outlined in Table 1 (above), there is a complete toxicity data base for myclobutanil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. In a range of laboratory studies to indicate concerns regarding developmental toxicity, reproductive toxicity and prenatal and postnatal sensitivity, EPA's analysis reconfirmed previous findings, that an additional FQPA safety factor is not necessary for myclobutanil. Existing default safety factors provide adequate protection for public health, including for infants and children.

D. Aggregate Risks and Determination of Safety

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

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

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

More recently the Agency has begun using another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface water and ground water EECs are directly incorporated into the dietary exposure analysis, along with food. This can provide a more realistic estimate of exposure because actual body weights and water consumption from the CSFII can often be used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. Combining screening level estimates of pesticide residues in drinking water from drinking water models with what may be more realistic values for residues in food is not ideal. Once screening level values are combined with more realistic values it is easy to lose sight of the fact that aggregate exposure estimate is based on a mixture of very conservative and more realistic estimates. Nonetheless, this

concern with mixing screening level and more realistic values is outweighed where the Agency is able to incorporate information on actual body weights and water consumption into the aggregate exposure calculation. This risk assessment for myclobutanil was conducted using this approach.

1. *Acute risk*. The acute dietary endpoint for females in the 13 to 50 year age group is based on the NOAEL for a developmental toxicity in rabbits which manifested as increases in resorptions, decreases in litter size. This endpoint is considered appropriate for females of childbearing age (13–50 years old) since the effects could occur due to a single *in utero* exposure. There were no appropriate toxicological effects for the general population attributable to a single exposure (dose) observed in oral toxicity studies including the maternal effects in the developmental toxicity studies in rats and rabbits. Therefore, an acute dose and an endpoint were not selected for the general population for this risk assessment.

Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to myclobutanil will occupy 4% of the aPAD for the population subgroup of interest, females 13–49 years old.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO MYCLOBUTANIL

Population Subgroup	aPAD (mg/kg)	% aPAD/(Food + Water)
Females (13–49 years old)	0.6	4%

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to myclobutanil from food and water will utilize 21% of the cPAD for the U.S. population, 41% of the cPAD for all infants < 1 year old, and 45% of the cPAD for children 1–2 years old. Based the use pattern, chronic residential exposure to residues of myclobutanil is not expected.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO MYCLOBUTANIL

Population Subgroup	cPAD/(mg/kg/day)	% cPAD
General U.S. population	0.025	21%
All Infants (< 1 year old)	0.025	41%
Children (1–2 years old)	0.025	45%
Children (3–5 years old)	0.025	38%
Children (6–12 years old)	0.025	25%
Youth (13–19 years old)	0.025	16%
Adults (20–49 years old)	0.025	18%
Adults (50+ years old)	0.025	19%
Females (13–49 years old)	0.025	18%

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Myclobutanil is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for myclobutanil. For short-term aggregate exposure risk assessment, even though there was no systemic toxicity in a dermal study, by combining dermal with oral and inhalation exposures would provide the most conservative risk assessment approach. Since all the acceptable short-term MOEs are 100 but the NOAELs vary (short-term dermal NOAEL is 100 mg/kg/day, all others are 10 mg/kg/day), the reciprocal equation approach will be used to calculate aggregate short-term risk estimates. The aggregate short-term exposure estimates are below the Agency's LOC (MOEs < 100).

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO MYCLOBUTANIL

Population Subgroup	Target MOE	Food + Water			Dermal MOE	Oral MOE	Aggregate MOE[3]
		NOAEL[1] (mg/kg/day)	Average Food + Water Exposure (mg/kg/day)	MOE[2]			
Children (1–2 years old)	100	10	0.011230	890	830	140	110
U.S. population	100	10	0.005234	1,900	1,400	N/A	800

1 Short-term Oral NOAEL
2 MOE = NOAEL/Exposure
3 Aggregate MOE = [1÷ ((1/MOE Food + Water) + (1/MOE Dermal) + (1/MOE Oral))]

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Myclobutanil is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for myclobutanil. For myclobutanil intermediate-term aggregate exposure risk assessment, oral, dermal and inhalation exposures can be combined because dermal and inhalation exposures can be expressed

as oral equivalent doses. The aggregate intermediate-term exposure estimates for myclobutanil do not include inhalation exposure, as there is no associated scenario.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 330 for children 1–2 years old and 620 for the general U.S. population. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food, water and residential uses.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO MYCLOBUTANIL

Population Subgroup	NOAEL (mg/kg/day)	Max allowable exposure[1] (mg/kg/day)	Average Food + Water Exposure (mg/kg/day)	Dermal Exposure (mg/kg/day)	Oral Exposure (mg/kg/day)	Residential Exposure (mg/kg/day)[2]	Aggregate MOE[3]
Children (1–2 years old)	10	0.1	0.011230	0.018	0.0013	0.0193	330
U.S. population	10	0.1	0.005234	0.011	N/A	0.011	620

1 Maximum Exposure (mg/kg/day) = NOAEL/Target MOE of 100.
2 Residential Exposure = The combined dermal and incidental oral ingestion for infants and dermal only for adults.
3 Aggregate MOE = [NOAEL ÷ (Avg Food & Water Exposure + Residential Exposure)]

5. *Aggregate cancer risk for U.S. population*. The Agency has classified myclobutanil as a ''Group E - not likely human carcinogen'' and, therefore, quantification of human cancer risk is not required.

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

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. 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 Maximum Residue Limits (MRLs) for myclobutanil on soybeans. Therefore, there are no international harmonization issues associated with this action.

VI. Conclusion

Therefore, the tolerance is established for combined residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), in or on soybeans at 0.05 ppm.

VII. 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–2005–0225 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 October 24, 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 issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

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

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.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 the docket ID number OPP–2005–0225, 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 issue(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 time-limited tolerance under section 408 of the FFDCA. 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 FIFRA section 18 exemption under section 408 of the 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 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.

IX. 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: August 12, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

n 2. Section 180.443 is amended by alphabetically adding a commodity to the table in paragraph (b) to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * * * *		
Soybean	0.05	12/31/09

* * * * *

[FR Doc. 05–16805 Filed 8–23–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 081805B]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 19, 2005, through 1200 hrs, A.l.t., September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 200 metric tons as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005), for the period 1200 hrs, A.l.t., July 5, 2005, through 1200 hrs, A.l.t., September 1, 2005.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and ''other species.''

This closure does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

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 closure of the shallow-water species fishery by vessels using trawl gear in the GOA.

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 § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–16839 Filed 8–19–05; 2:24 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 163
Wednesday, August 24, 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.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2005–20]

Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on proposed changes to its rule defining ''electioneering communications'' under the Federal Election Campaign Act of 1971, as amended (''FECA''). The proposed changes would modify the definition of ''publicly distributed'' and the exemptions to the definition of ''electioneering communications'' consistent with the ruling of the U.S. District Court for the District of Columbia in *Shays* v. *FEC,* portions of which were affirmed by the U.S. Court of Appeals for the District of Columbia Circuit. With regard to possible exemptions, the Commission is considering a range of options, including: Retaining the section 501(c)(3) organization exemption and the State candidate exemption; narrowing the section 501(c)(3) organization exemption; repealing the two current exemptions for section 501(c)(3) organizations and State candidates; and replacing all of the current exemptions with a broad new exemption covering all communications that do not promote, support, attack or oppose a Federal candidate. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before September 30, 2005. The Commission will hold a hearing on the proposed rules on October 19 and, if necessary, October 20, 2005 at 9:30 a.m. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, must be addressed to Ms. Mai T. Dinh, Assistant General Counsel, and must be submitted in either email, facsimile, or paper form. Commenters are strongly encouraged to submit comments by email or facsimile to ensure timely receipt and consideration. Email comments must be sent to either *ECdef@fec.gov* or submitted through the Federal eRegulations Portal at *www.regulations.gov*. If the email comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its website after the comment period ends. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Pub. L. 107–155, 116 Stat. 81 (2002), amended the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the ''Act''), by adding a new category of communications, ''electioneering communications,'' to those already regulated by the Act. *See* 2 U.S.C. 434(f)(3). Generally speaking, electioneering communications are broadcast, cable or satellite communications that refer to a clearly identified candidate for Federal office, are publicly distributed within 60 days before a general election or 30 days before a primary election, and are targeted to the relevant electorate. *See* 2 U.S.C. 434(f)(3)(A)(i); 11 CFR 100.29(a)(1) through (3). Electioneering communications carry certain reporting obligations and funding restrictions. *See* 2 U.S.C. 434(f)(1) and (2), and 441b(a) and (b)(2).

BCRA exempts certain communications from the definition of ''electioneering communication,'' 2 U.S.C. 434(f)(3)(B)(i) to (iii), and specifically authorizes the Commission to promulgate regulations exempting other communications as long as the exempted communications do not promote, support, attack or oppose (''PASO'') a candidate, 2 U.S.C. 434(f)(3)(B)(iv), *citing* 2 U.S.C. 431(20)(A)(iii).

On October 23, 2002, the Commission promulgated regulations to implement BCRA's electioneering communications provisions. *Final Rules and Explanation and Justification for Regulations on Electioneering Communications,* 67 FR 65190 (Oct. 23, 2002) (*''EC E&J''*). In *Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004), *aff'd,* No. 04–5352, 2005 WL 1653053 (D.C. Cir. July 15, 2005) (*''Shays''*), the District Court held that one regulation limiting electioneering communications to communications publicly distributed for a fee failed review under *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984) (*''Chevron''*), and one regulation exempting section 501(c)(3) organizations failed to satisfy the Administrative Procedure Act, 5 U.S.C. 706(2) (''APA''). *Shays,* 337 F. Supp. 2d at 124–29. The District Court remanded the case for further action consistent with its decision. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court, holding that the ''for a fee'' regulation failed *Chevron* review. *Shays* v. *FEC,* No. 04–5352, slip op. at 52–57, 2005 WL 1653053, at *28–31 (D.C. Cir. July 15, 2005). The Commission did not appeal the District Court's decision regarding an exemption from the ''electioneering communication'' definition for section 501(c)(3) organizations. The Commission is issuing this NPRM to comply with the District Court and Court of Appeals decisions with respect to both regulations.

A. 11 CFR 100.29(b)(3)(i)—Communications Publicly Distributed Without a Fee

In 11 CFR 100.29(b)(3)(i), the Commission defined ''publicly distributed'' as ''aired, broadcast, cablecast or otherwise disseminated *for a fee* through the facilities of a television station, radio station, cable television system, or satellite system''

(emphasis added). The Commission included the requirement that the communication be publicly distributed for a fee, in part, because ''[m]uch of the legislative history and virtually all of the studies cited in legislative history and presented to the Commission in the course of this rulemaking focused on paid advertisements in considering what should be included within electioneering communications.'' *EC E&J* at 65192 (citations to studies omitted). Both the District Court and the Court of Appeals in *Shays* determined that the ''for a fee'' language in the definition of ''publicly distributed'' operated much like an exemption to the definition of ''electioneering communication.'' *Shays,* 337 F. Supp. 2d at 128–29; No. 04–5352, slip op. at 55, 57, 2005 WL 1653053, at *30, 31. The District Court found that the exemption exceeded the Commission's statutory authority to create exemptions because it could potentially include communications that PASO a Federal candidate. *Shays,* 337 F. Supp. 2d at 128–29. Both the District Court and the Court of Appeals held that the ''for a fee'' provision is inconsistent with the plain text of BCRA and thus violated *Chevron* step one.[1] *Shays,* 337 F. Supp. 2d at 129; No. 04–5352, slip op. at 54, 2005 WL 1653053, at *29.

Additionally, the Court of Appeals observed that ''excluding federal candidates from broadcasts promoting blood drives and other worthy causes for 90 days out of every two years (30 days before the primary plus 60 days before the general election) would hardly seem unreasonable given that such broadcasts 'could associate a Federal candidate with a public-spirited endeavor in an effort to promote or support a candidate'—a risk the FEC itself acknowledged in the very same rulemaking, in justifying its refusal to promulgate a general exemption for [public service announcements] (whether paid or unpaid).'' *Shays,* No. 04–5352, slip op. at 56, 2005 WL 1653053, at *30 (citation omitted). Thus an exemption that is limited to non-PASO communications may, in practice, exempt comparatively few communications from the definition of ''electioneering communications.'' Additionally, many other types of communications that would be covered by an exemption for communications that are not publicly distributed for a fee are also already exempt under the statutory press exemption, which exempts ''a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station.'' 2 U.S.C. 434(f)(3)(B)(i).

Consequently, the Commission proposes to eliminate the phrase ''for a fee'' from the definition of ''publicly distributed'' at 11 CFR 100.29(b)(3)(i). The Commission seeks comment on whether this approach of removing ''for a fee'' from the ''electioneering communication'' definition without exempting such communications would require extensive monitoring of radio and television programming to ensure that it either fits the statutory press exemption or otherwise avoids the reach of the ''electioneering communication'' rules. Would the Commission have to distinguish ''commentary'' from free time donated to political committees or candidates, which was approved in Advisory Opinions (''AOs'') 1982–44 and 1998–17?

The Commission is also considering another alternative that is not reflected in the proposed rules below. This alternative would include deleting ''for a fee'' from the definition of ''publicly distributed'' and would also include a new exemption for communications for which the broadcast, cable or satellite entity does not seek or obtain compensation for publicly distributing the communications, unless the communications promote, support, attack or oppose a Federal candidate. An important rationale that underlies this alternative proposal is that broadcasters donate airtime to organizations to broadcast communications in the public interest, such as public service announcements promoting a wide range of worthy endeavors. Subjecting these communications to the electioneering communication regulations may discourage broadcasters from performing an important public service in providing free airtime for these ads. An exemption that is limited to non-PASO communications may, in practice, exempt comparatively few communications from the definition of ''electioneering communications.'' Must the Commission provide some definition of PASO for the exemption to be meaningful and explicable to the regulated community or is the PASO standard self-executing and understandable without further definition by the Commission? The Commission seeks comment on whether this alternative proposal is preferable to the proposed rules that would delete ''for a fee'' from the definition of ''publicly distributed'' without an exemption for unpaid advertisements that do not PASO Federal candidates.

B. 11 CFR 100.29(c)(6)—Exemption for Section 501(c)(3) Organizations

In 2002, the Commission exempted from the ''electioneering communication'' definition any communication that is paid for by any organization operating under section 501(c)(3) of the Internal Revenue Code. *See* current 11 CFR 100.29(c)(6). The Commission explained that it ''believes the purpose of BCRA is not served by discouraging such charitable organizations from participating in what the public considers highly desirable and beneficial activity, simply to foreclose a theoretical threat from organizations that has not been manifested, and which such organizations, by their very nature, do not do.'' *EC E&J* at 65200. Under the Internal Revenue Code, organizations described in section 501(c)(3) may not ''participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.'' *See* 26 U.S.C. 501(c)(3).

In considering a challenge to the exemption for section 501(c)(3) organizations, the *Shays* District Court examined whether the exemption complies with BCRA. The District Court found the record unclear as to whether the regulation's reliance on the Internal Revenue Code prohibitions would impermissibly exempt advertisements that PASO Federal candidates. On this basis, the District Court held that it could not determine whether or not the regulation fails *Chevron* review.[2] *See Shays,* 337 F. Supp. 2d at 127.

The District Court held that the exemption for section 501(c)(3) organizations violated the APA because the Explanation and Justification for 11 CFR 100.29(c)(6) led the court to conclude that the Commission ''failed to conduct a reasoned analysis.'' *See Shays,* 337 F. Supp. 2d at 127–28. Specifically, the District Court found the *EC E&J* deficient because it did not address the ''compatibility'' of the Internal Revenue Service's (''IRS's'') enforcement of the section 501(c)(3)

[1] The District Court described the first step of the *Chevron* analysis, which courts use to review an agency's regulations: ''a court first asks 'whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'' *See Shays,* 337 F. Supp. 2d at 51 (quoting *Chevron,* 467 U.S. at 842–43).

[2] The first step of the *Chevron* analysis is described in footnote 1 above. The second step of the *Chevron* analysis is whether the agency's resolution of an issue not addressed in the statute is based on a permissible construction of the statute. *See Shays,* 337 F. Supp. 2d at 52 (citing *Chevron*).

prohibition on political activity and FECA's requirements. The District Court identified three specific omissions from the *EC E&J:* (1) It did not discuss whether or not public communications that PASO a Federal candidate would be viewed by the IRS as political activity in which section 501(c)(3) organizations may not engage; (2) it did not discuss the risk, if any, that limited lobbying activity permitted for section 501(c)(3) organizations could give rise to advertisements that PASO a Federal candidate; and (3) it did not address the implications of allowing the IRS ''to take the lead in campaign finance law enforcement.'' [3] *See Shays,* 337 F. Supp. 2d at 128. The District Court remanded this regulation to the Commission for further action consistent with its order. *Id.* at 130. Instead of appealing this aspect of the District Court decision, the Commission chose to initiate this rulemaking to address the three concerns expressed by the District Court. In addition to the District Court's concerns, a well-developed administrative record will inform the Commission's reconsideration of an exemption for section 501(c)(3) organizations.

1. PASO Communications as Political Activity

The *Shays* District Court stated that ''the validity of the Commission's regulation depends on whether or not the tax laws and regulations, as well as their enforcement, effectively prevent Section 501(c)(3) groups from issuing public communications that promote or oppose a candidate for federal office.'' *Shays,* 337 F. Supp. 2d at 127. The District Court also specified that the *EC E&J* failed to discuss ''whether or not the IRS viewed as political activity 'public communications' that support or oppose a candidate as those concepts are understood under this nation's campaign finance laws.'' *Id.* at 128. Thus the task before the Commission, if it decides to retain current 11 CFR 100.29(c)(6), is to make a finding based on a well-developed record that section 501(c)(3) organizations cannot make PASO communications when acting lawfully within their tax-exempt status.

In response to the 2002 NPRM concerning electioneering communications, Notice of Proposed Rulemaking on Electioneering Communications, 67 FR 51131 (Aug. 7, 2002), several section 501(c)(3) organizations submitted comments and addressed the issue of whether these organizations pay for PASO communications. One commenter asserted that section ''501(c)(3)[ ] [organizations] could never legally broadcast advertisements that contain even the slightest suggestion of support for or opposition to any candidates due to the substantial restrictions under federal law.'' [4] The commenter said it knew of ''no examples where 501(c)(3)s have broadcast the so-called ''sham issue ads'' that BCRA attempts to ban or regulate.'' In contrast, another commenter stated that it does engage in issue advocacy that includes broadcast advertisements that refer to candidates and officeholders, and implied that these advertisements may well PASO a candidate.[5]

In addition, the record in *Shays* v. *FEC* includes press reports describing a radio ad run by a section 501(c)(3) organization, the Federation for American Immigration Reform (''FAIR''), that appears to attack or oppose a Federal candidate. *See* Memorandum in Support of Plaintiffs' Motion for Summary Judgment at 78 n.138, *Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004). The text of the ad reportedly included the following: ''This is an urgent message about our jobs. Senator Spence Abraham is again pushing a bill to import hundreds of thousands more foreign workers to take American jobs—our jobs. * * * Recently Abraham killed the requirement that employers hire Americans first. He clearly thinks it's OK to favor foreign workers. Why treat Americans so badly? Money. Abraham has raised big political money from huge corporations that want cheap, foreign labor. And his newest bill gives them everything they want. Is your job next? Let's try to convince Abraham not to sell our jobs. His bill could be voted on any day. So call now: 1–800–xxx–xxxx. That's 1–800–xxx–xxxx. Tell him you've had enough of his big foreign labor bills, like S. 2045. This message sponsored by the Federation for American Immigration Reform. Visit our website at fairUS.org.'' [6]

In a Technical Advice Memorandum the IRS ''reluctantly conclude[d]'' that television advertisements by a section 501(c)(3) organization that would be generally understood to ''support or oppose a candidate in an election campaign'' did not constitute intervention in a political campaign because the communication was core to the organization's mission. *See* Technical Advice Memorandum 89–36–002, 1989 WL 596078 (Sept. 8, 1989).

While these statements and examples are helpful to the Commission in understanding the interaction between tax law and campaign finance law as they pertain to communications by section 501(c)(3) organizations, they provide a limited record for the Commission to exempt all section 501(c)(3) organizations' communications. For example, how should the Commission interpret the Technical Advice Memorandum, which does not have precedential authority? To the extent that section 501(c)(3) organizations pay for advertisements similar to the one by FAIR described above, do the section 501(c)(3) organizations broadcast their advertisements during the 30- and 60-day electioneering communication windows? Is the FAIR advertisement typical of grass roots lobbying advertisements by section 501(c)(3) organizations or is it atypical?

The Commission invites comments that would shed more light on these issues. Specifically, the Commission is seeking data as to whether section 501(c)(3) organizations have a history of airing ads close to elections, particularly those that satisfy the definition of ''electioneering communication.'' The

[3] Although the *EC E&J* states that the exemption for section 501(c)(3) organizations does not amount to a delegation of the enforcement of the electioneering communication provisions to the IRS, it also noted: ''Should the Internal Revenue Service determine, under its own standards for enforcing the tax code, that an organization has acted outside its 501(c)(3) status, the organization would be open to complaints that it has violated or is violating Title II of BCRA.'' 67 FR at 65200. The *Shays* District Court compared these two statements from the *EC E&J* and found it ''clear * * * that a prerequisite to the FEC enforcing its exemption is the completion of enforcement action by the IRS pursuant to 'its own standards for enforcing the tax code.' '' *Shays,* 337 F. Supp. 2d at 127.

[4] *See* Comment submitted by Alliance for Justice and the Sierra Club Foundation (available at *http://www.fec.gov/pdf/nprm/electioneering_comm/comments/alliance_for_justice.pdf*); *see also* Comment submitted by Independent Sector (stating that federal tax law prohibits section 501(c)(3) organizations from engaging in activity that would support or oppose any candidate) (available at *http://www.fec.gov/pdf/nprm/electioneering_comm/comments/independent_sector.pdf*). The Alliance for Justice describes itself as ''a national association of environmental, civil rights, mental health, women's, children's, and consumer advocacy organizations.'' The Independent Sector, which describes itself as ''a coalition of corporate, foundation, and voluntary organization members which serves as a national forum to encourage giving, volunteering, and nonprofit initiatives,'' submitted its comments on behalf of its membership and on behalf of seven specifically identified members.

[5] *See* Comment submitted by Southeastern Legal Foundation, Inc. (''SLF'') (available at *www.fec.gov/pdf/nprm/electioneering_comm/comments/se_legal_foundation.pdf*).

[6] Based on the timing of the article, it appears that this advertisement was publicly distributed more than 30 days before the 2000 primary election in Michigan. The Commission is unaware of whether the advertisement continued to run during the 30 days prior to the primary or the 60 days prior to the general election.

Commission is not aware that any of the advertisements addressed in the legislative history of BCRA, including those analyzed in the Brennan Center for Justice's *Buying Time: Television Advertising in the 2000 Federal (or 1998 Congressional) Elections,* or the record in *McConnell* v. *FEC,* 540 U.S. 93 (2003), were made by section 501(c)(3) organizations, and seeks comment on whether there are, in fact, communications from section 501(c)(3) organizations in this record. Additionally, since the Commission promulgated the current 11 CFR 100.29(c)(6), to what extent have section 501(c)(3) organizations availed themselves of this exemption? If commenters are able to submit the texts of advertisements by section 501(c)(3) organizations that would meet the definition of ''electioneering communications,'' the Commission seeks comment on whether the advertisements would be consistent with the section 501(c)(3) organization's tax-exempt status.

In addition to reconsidering the adequacy of an administrative record that could support current 11 CFR 100.29(c)(6), this NPRM also proposes an amendment to the current rule. Proposed section 100.29(c)(6) would provide an exemption for communications by section 501(c)(3) organizations subject to two limitations. First, the exemption would not apply to communications that PASO a Federal candidate. Second, the exemption would not apply to section 501(c)(3) organizations that are directly or indirectly established, financed, maintained or controlled by a Federal candidate or officeholder. Would limiting the exemption to non-PASO communications adequately address the District Court's concerns because the exemption no longer turns on the IRS's view on political activities? How common is it for Federal candidates to directly or indirectly establish, finance, maintain, or control a section 501(c)(3) organization? Is there a greater potential that section 501(c)(3) organizations that are established, financed, maintained, or controlled by Federal candidates would pay for communications that PASO Federal candidates?

The Commission is not proposing to define ''PASO'' in this rulemaking. In rejecting a vagueness challenge to the PASO standard, the Supreme Court in *McConnell* held that PASO provisions, at least with respect to political parties, ''provide explicit standards for those who apply them and give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.'' *McConnell,* 124 S. Ct. at 675 n. 64. In light of the Supreme Court's ruling in *McConnell,* is the PASO standard essentially self-executing and understandable without further definition by the Commission or, given that the proposed regulation would apply to entities beyond political parties, must the Commission provide some definition of PASO for the proposed regulation to be meaningful and explicable to broadcasters and the regulated community?

The Commission has applied the PASO standard to an advertisement that was the subject of an advisory opinion, concluding that the advertisement did *not* PASO the Federal candidate who appeared in the advertisement. *See* AO 2003–25, at 3. That advertisement presented a Federal candidate's endorsement of a candidate for mayor, and the script read as follows:

> Hi. I'm Evan Bayh. Over the past few years, I've come to know Jonathan Weinzapfel very well. We've worked together, and I've seen first-hand how committed he is to making Evansville a better city. From working to cut taxes, to passing a law that protects our kids from drugs, Jonathan Weinzapfel knows how to get the job done. He's got a bipartisan, common-sense way of solving problems. He cares about what really matters to people. And he's exactly the kind of Mayor Evansville needs.

AO 2003–25, at 2–3. The advertisement ran outside the electioneering communication window, so it did not meet the definition of ''electioneering communication.'' AO 2003–25, at 6. However, the Commission is seeking comment on whether the conclusion in AO 2003–25—*i.e.* a Federal candidate's endorsement does not PASO that Federal candidate—was correct, and whether the conclusion can be applied in the context of communications by section 501(c)(3) organizations. For example, a section 501(c)(3) organization pays for a television advertisement that features a Federal candidate endorsing the section 501(c)(3) organization and the advertisement satisfies the timing and targeting elements of the definition of ''electioneering communication.'' Would this advertisement be exempt from the definition of ''electioneering communication'' under proposed 11 CFR 100.29(c)(6), based on the premise that the Federal candidate's endorsement of the section 501(c)(3) organization does not PASO that Federal candidate? Or should the Commission conclude that the endorsement does PASO the Federal candidate and would not be exempt under proposed section 100.29(c)(6)?

Another example of a communication by a section 501(c)(3) organization that may illustrate the application of the PASO standard can be found in Advisory Opinion 2004–14. The script for one of the television advertisements read as follows:

> Hi, I'm Congressman Tom Davis. Did you know that the Washington, DC metropolitan area has the highest prevalence of kidney disease in the nation? Nearly five thousand area residents are on dialysis and more than 1,700 await a life-saving kidney transplant. But there's something you can do to help. Join me and WUSA9 sports anchor Frank Herzog for the Fourth Annual Cadillac Invitational Golf Classic, benefiting the National Kidney Foundation. The tournament will take place on Monday, April 26, at Lowes Island Club in Potomac Falls, Virginia. To find out more, call [omitted] or visit www.kidneywdc.org. Come out and support the National Kidney Foundation in its commitment to making lives better for Washington area kidney patients.

AO 2004–14, at 2. In Advisory Opinion 2004–14, the Commission concluded that this advertisement was not an electioneering communication because it was not publicly distributed for a fee and it was not distributed within the electioneering communication windows. *See* AO 2004–14, at 4 (*citing* 11 CFR 100.29(a)(2) and (b)(3)(i)). However, the Commission offers this advertisement to solicit comment on whether this communication would be exempt under proposed 11 CFR 100.29(c)(6) because it does not PASO Congressman Davis, if it otherwise met the definition of ''electioneering communication.''

The policy rationale behind the proposed rules is that, to the extent possible, the Commission does not want to discourage section 501(c)(3) organizations from performing a public service in pursuing their charitable endeavors. The Commission, however, is considering whether applying the PASO limitation would severely limit the benefit of such an exemption for section 501(c)(3) organizations. In *Shays* v. *FEC,* the Court of Appeals suggested that public service announcements (''PSAs'') that associate a Federal candidate with a public-spirited endeavor could promote or support that candidate. *Shays* v. *FEC,* No. 04–5352, slip op. at 56, 2005 WL 1653053, at *30 (D.C. Cir. July 15, 2005). Given that many broadcast advertisements by section 501(c)(3) organizations are PSAs that might be viewed as PASO communications, what utility does the proposed exemption have if the exemption does not include such PSAs? Additionally, many section 501(c)(3) organizations may lack familiarity with the nuances of campaign finance law. Would section 501(c)(3) organizations find the PASO standard confusing or

difficult to apply, making it less likely that they would avail themselves of the proposed exemption if the Commission were to adopt it? Finally, if a fuller record shows that section 501(c)(3) organizations make a significant number of PASO communications during the 30 and 60 day windows, or if the record fails to resolve the issue one way or another, is there a substantial policy rationale for having a section 501(c)(3) exemption?

2. Lobbying Activity That May Include PASO Communications

The *Shays* District Court identified a second deficiency in the Commission's promulgation of the 501(c)(3) exemption: ''the FEC did not note that tax laws permit Section 501(c)(3) organizations to engage in limited lobbying activities, or discuss the risk, if any, that such activities could run afoul of 2 U.S.C. 434(f)(3)(B)(iv).'' *Shays*, 337 F. Supp. 2d at 128 (*citing* 26 U.S.C. 501(c)(3), (h)). The District Court refers to the requirement in section 501(c)(3) of the Internal Revenue Code that ''no substantial part of the activities of [the organization] is carrying on propaganda, or otherwise attempting, to influence legislation.''[7]

Under IRS regulations, the definition of ''grass roots lobbying communications'' as applied to section 501(c)(3) organizations is ''any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.'' 26 CFR 56.4911–2(b)(2)(i). An element of that definition is ''encouraging recipients to take action'' which includes a communication that ''states that the recipient should contact a legislator'' or that ''specifically identifies one or more legislators who will vote on the legislation as: Opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee or subcommittee that will consider the legislation * * * [but] does not include naming the main sponsor(s) of the legislation for purposes of identifying the legislation.'' *Id*. at 56.4911–2(b)(2)(iii)(B) and (D) (specifying other types of communications that are considered as ''encouraging recipients to take action,'' but that are not relevant to this issue). Given the IRS's definition of ''grass roots lobbying communications,'' to what extent, if any, may the permitted grass roots lobbying communications result in some section 501(c)(3) organizations making communications that PASO a Federal candidate?

In order to consider the issues surrounding grass roots lobbying communications, the Commission seeks comment on how frequently section 501(c)(3) organizations make grass roots lobbying communications. One research survey addressing this question entitled ''SNAP: Strengthening Nonprofit Advocacy Project'' was submitted to the Commission in the 2002 rulemaking.[8] This research project, conducted by Tufts University, OMB Watch and Charity Lobbying in the Public Interest, reports that it surveyed 2,735 randomly selected section 501(c)(3) organizations that file IRS Form 990, excluding hospitals, universities, religious organizations, and private foundations. Of the organizations surveyed, 63% responded. According to this report, 78% of the organizations that responded engage in grassroots lobbying. As to the frequency of their grassroots lobbying, 63% reported low (19%), very low (22%), or none (22%).

An analysis of data from the National Center for Charitable Statistics, which was drawn from reports filed with the IRS, found that 1.5% of section 501(c)(3) organizations (or 3,515 organizations) reported lobbying expenditures in 1998, and these organizations reported devoting only 1.2% of their total expenses to lobbying that year. Only 702 organizations reported grass roots lobbying expenditures, although only organizations making the section 501(h) election are required to report that information disaggregated from total lobbying expenditures. In 1998, 43% of the section 501(c)(3) organizations that reported lobbying expenditures (or approximately 1,500 organizations) made the section 501(h) election. The median total lobbying expenditures was $8,000, and the median total grassroots lobbying expenditures was $4,246. *See* Jeff Krehely, *Assessing the Current Data on 501(c)(3) Advocacy: What IRS Form 990 Can Tell Us*, in *Exploring Organizations and Advocacy: Strategies and Finances* 37–50 (Elizabeth J. Reid and Maria D. Montilla eds., 2001).[9]

How should the Commission interpret these findings? Are there any other reports, studies, or evidence regarding lobbying by 501(c)(3) organizations that the Commission should consider?

3. Reliance on IRS Enforcement

The District Court in Shays held that the effect of the current exemption in 11 CFR 100.29(c)(6), as explained in the *EC E&J*, is that ''the FEC would do nothing until the IRS investigated and decided whether or not the organization violated the tax laws.'' *Shays*, 337 F. Supp. 2d at 128. The District Court concluded that the Commission failed to consider the effectiveness of, and the problems presented by, adopting an enforcement policy that relies on the IRS's enforcement of the tax code. *Id*.

In addressing the extent to which the Commission could or should rely on IRS enforcement of the tax code as a safeguard for ensuring that section 501(c)(3) organizations do not make communications that would support or oppose a Federal candidate, the Commission is considering statements and testimony from several sources, including section 501(c)(3) organizations and the Government Accountability Office (''GAO''). Several section 501(c)(3) organizations, commenting on the 2002 NPRM, stated that the possibility of an IRS revocation of their 501(c)(3) status because of their political activities was a strong deterrent to their engaging in activity that may be viewed as supporting or opposing candidates.[10] See *EC E&J* at 65199. One commenter stated that IRS's enforcement is vigorous and noted that

[7] Certain section 501(c)(3) organizations may choose not to lobby at all, may lobby under section 501(c)(3)'s ''substantial part'' test, or may lobby under a section 501(h) election. Section 501(h) of the Internal Revenue Code provides that certain section 501(c)(3) organizations may elect to have their lobbying activities governed by objective expenditure tests in lieu of being subject to the subjective ''substantial part'' test of section 501(c)(3) of the Internal Revenue Code. Section 501(h) of the Internal Revenue Code, which sets forth the objective test, establishes a sliding scale of permissible ''lobbying nontaxable amounts'' and ''grass roots nontaxable amounts.'' The grass roots nontaxable amount ranges from a low of 5% of an organization's exempt purpose expenditures (for organizations with up to $500,000 of exempt purpose expenditures) to a high of $250,000 (for organizations with exempt purpose expenditures in excess of $17,000,000). 26 U.S.C. 4911(c)(4). Expenditures for grass roots lobbying in excess of the nontaxable amount will be subject to a 25% tax. 26 U.S.C. 4911(a)(1). Additionally, if lobbying expenditures are ''normally'' in excess of 150% of the nontaxable amounts for a four-year period, the organization may be subject to revocation of tax-exempt status. 26 U.S.C. 501(h)(1)(B); 26 CFR 1.501(h)–3(b) and (c)(7). Please note that the section 501(c)(3) organization that received the IRS's Technical Advice Memorandum 89–36–002 (Sept. 8, 1989), which is discussed above, had elected to be subject to 26 U.S.C. 501(h).

[8] A copy of this report is available at *http://www.ombwatch.org/npadv/Final%20SNAP%20Overview.ppt* (last viewed on August 2, 2005).

[9] This document is available at *http://www.urban.org/Uploadedpdf/org_advocacy.pdf* (last viewed on August 3, 2005).

[10] *See e.g.*, Comments submitted by Independent Sector and Alliance for Justice (available at *http://www.fec.gov/pdf/nprm/electioneering_comm/comments/independent_sector.pdf* and *http://www.fec.gov/pdf/nprm/electioneering_comm/comments/alliance_for_justice.pdf*, respectively), and hearing testimony of Mr. Tim Mooney of Alliance for Justice (available at *http://www.fec.gov/pdf/nprm/electioneering_comm/20020828trans.pdf*).

the ''IRS has repeatedly stated and successfully argued in court that this prohibition [on participation or intervention in political campaigns] is a ''zero tolerance'' rule.'' Comment of Independent Sector.

A report by the GAO provides a different perspective, suggesting that the IRS lacks the resources for adequate oversight and enforcement. In 2002, the GAO issued a report noting that the IRS had little data on the compliance of section 501(c)(3) organizations, and recognizing the need for improved monitoring of compliance and for ''better understanding of the type and extent of compliance problems in the charitable community.'' U.S. Gen. Accounting Office, *Tax Exempt Organization: Improvements Possible in Public, IRS, and State Oversight of Charities,* GAO 02–526 (Apr. 2002).[11]

The Commission seeks comments and other reports, documents or evidence that would shed light on the appropriateness of the current rule's deference to IRS determinations and actions in this area and that would assist the Commission in deciding whether to retain the current rule.

This mix of views regarding IRS enforcement, along with the questions raised above concerning the interaction between PASO communications and lobbying, leave the Commission without a clear record at this time regarding whether or not section 501(c)(3) organizations make PASO communications. Consequently, under proposed 11 CFR 100.29(c)(6), the Commission would make its own judgment as to whether a communication PASOs a candidate, without regard for how the IRS may view the same communication, and without waiting for the IRS to consider enforcement action. Thus, the proposed rule would not delegate ''the first response to potential violations to the IRS.'' *See Shays,* 337 F. Supp. 2d at 128.

The Commission seeks comment on whether the proposed rule adequately addresses the deficiencies identified by the District Court in *Shays* in relying on the IRS's enforcement of the tax code applicable to section 501(c)(3) organizations.

[11] Although this report addressed section 501(c)(3) organizations' compliance with the tax code in general and not their political activities specifically, the GAO's statements and conclusions about the IRS's enforcement capabilities are useful to the discussion of the IRS's enforcement of the prohibition on section 501(c)(3) organizations' activities that are considered participating or intervening in a political campaign.

C. Eliminating All Regulatory Exemptions From the Electioneering Communications Restrictions

As an alternative to the proposed modifications to the current section 501(c)(3) exemption, the Commission also seeks comment on whether it should repeal both of the regulatory exemptions from the electioneering communications rules, 11 CFR 100.29(c)(5) and (6), and instead rely solely on the exemptions that Congress established in BCRA. These regulatory exemptions include not only the section 501(c)(3) exemption in current 11 CFR 100.29(c)(6), but also an exemption for communications paid for by candidates for State or local office in connection with an election to State or local office that do not PASO any Federal candidates in current 11 CFR 100.29(c)(5). The Commission is also considering the proposed revisions to the State candidate exemption in the proposed rules that follow. The proposed revisions seek to clarify the exemption and harmonize its structure with proposed 11 CFR 100.29(c)(6).

BCRA establishes several exemptions from the electioneering communications provisions. Certain communications appearing in a news story, commentary, or editorial are exempt under 2 U.S.C. 434(f)(3)(B)(i) and current 11 CFR 100.29(c)(2). Communications that constitute a reportable expenditure or independent expenditure are exempt under 2 U.S.C. 434(f)(3)(B)(ii) and current 11 CFR 100.29(c)(3). Finally, candidate debates are exempt under 2 U.S.C. 434(f)(3)(B)(iii) and current 11 CFR 100.29(c)(4). Under this proposal, these statutory exemptions would remain in the regulations, while current 11 CFR 100.29(c)(5) and (c)(6) would be repealed.

D. Exempting All Communications That Do Not PASO a Federal Candidate

The Commission is also considering exempting from the ''electioneering communication'' definition all communications that do not PASO a Federal candidate. This proposal, which is not reflected in the proposed rules that follow, would employ the exemption authority provided to the Commission by Congress in 2 U.S.C. 434(f)(3)(B)(iv) to its full extent. The Commission seeks comments on whether this proposal's broad view of the Commission exemption authority is consistent with Congressional intent. Such an exemption would focus on the content of the communication and treat all communicators equally, in contrast to current 11 CFR 100.29(c)(5) and (c)(6), which are limited to particular speakers. Does this equality of treatment help justify the exemption? What form would the administrative record need to take to support such an exemption? Would such an exemption be consistent with the standard in 2 U.S.C. 434(f)(3)(A)(i)(I) that requires only a reference to a clearly identified candidate for Federal office? Would it effectively elevate the PASO standard as the primary determinant for electioneering communications? Must the Commission provide some definition of PASO for the exemption to be meaningful and explicable to the regulated community or is the PASO standard self-executing and understandable without further definition by the Commission?

E. Petition for Rulemaking To Exempt Advertisements Promoting Films, Books and Plays

On August 26, 2004, the Commission published a Notice of Availability seeking public comment on a Petition for Rulemaking (''Petition'') received by the Commission. The Petition requested the Commission revise its electioneering communications regulation by exempting the promotion and advertising of political documentary films, books, plays and similar means of expression that may otherwise meet the definition of an electioneering communication under 11 CFR 100.29. *See Notice of Availability of Rulemaking Petition: Exception for the Promotion of Political Documentary Films from ''Electioneering Communications,''* 69 FR 52461 (Aug. 26, 2004) (''*Notice of Availability*''). The documentary films, books and plays at issue in the Petition are not themselves subject to the electioneering communication rules because these items are not broadcast or disseminated through a cable or satellite system, but appear in movie theaters or other non-broadcast environments.[12] The premise for the Petition is that advertisements for such films, books, and plays would not be covered by the statutory exemption for communications ''appearing in a news story, commentary, or editorial distributed through the facilities of any broadcast station.'' 2 U.S.C. 434(f)(3)(B); *see also* 11 CFR 100.29(c)(2).

The comment period ended September 27, 2004. The Commission received seven comments, including a letter from the Internal Revenue Service

[12] The Commission has concluded that documentaries and educational programming that are aired, broadcast, or otherwise disseminated through radio, television, cable or satellite are covered by the exemption in section 100.29(c)(2) for a ''news story, commentary, or editorial.'' *EC E&J* at 65197.

indicating that it had ''no comments.'' These comments are available at *http://www.fec.gov/law/law_rulemakings.shtml* under ''Electioneering Communications Exception for Promotion of Political Documentaries.''

The Petition and some commenters argued that political documentary films and books might often refer to clearly identified candidates for Federal office, and that applying the electioneering communication rules to the broadcast, cable or satellite TV and radio advertisement of such items could stifle free speech. The Petition suggested that the Commission should create a specific exemption in 11 CFR 100.29(c) for all advertisements and promotion of political documentary films, books, plays and ''other forms of political expression that may involve references to Federal candidates.'' *See Notice of Availability* at 52461. One commenter suggested a narrower exemption for advertising of such political documentaries except for the four weeks preceding an election, but would require disclosure of funding of all political documentaries. Another commenter noted that the Petition only sought an exemption for works deemed ''political,'' and argued that a broader exemption for the promotion of documentary films, books and plays, regardless of whether the works are ''political'' was appropriate.

Two commenters also raised questions as to whether these documentaries are already covered by the current press exemption in 11 CFR 100.29(c)(2), and whether advertisements promoting them would also be covered by the press exemption. One of these commenters asserted that an additional rulemaking is unnecessary because the Commission has already stated that the press exemption in section 100.29(c)(2) applies to a documentary, and the commenter believes that by extension, the press exemption applies to the promotion of that documentary. *See Reader's Digest Ass'n* v. *FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981). The other commenter suggested a rulemaking was appropriate to revise section 100.29(c)(2) to specify that advertising for such documentary films falls within the scope of this press exemption. In contrast, other commenters were opposed to any specific exemption for advertising of documentary films as inconsistent with existing campaign finance law.

After considering the Petition and the comments received, the Commission has decided to open a rulemaking on this issue, as part of its revision of the electioneering communication rules in response of the *Shays* court opinions. Proposed 11 CFR 100.29(c)(7) would exempt communications promoting movies, books or plays, as long as the communications are run within the ordinary course of business of the persons that pay for such communications, and the communications do not PASO a Federal candidate. As urged by one of the commenters, the proposed rules would expand the exemption beyond ''political'' works to include advertising for any movie, book or play.

While the proposed rule applies to ''movies'' generally, the Commission seeks comment as to whether this reference should be understood to mean only movies appearing in theatres, or whether it should also apply to movies available for rental on DVD or video, or available on pay-per-view. Likewise, should the exemption apply only to printed books or should it also apply to books that are made available in audio and on-line formats? Furthermore, should the exemption be based on the actual or projected release date of the movie or book? For example, should the exemption only apply to movies that are shown during, or are being released within six months of, the electioneering communication window and to books that are in print during, or within six months of, the electioneering communications window? This sort of temporal limitation would be intended to prevent circumvention of the electioneering communication provisions by advertising a movie that either does not exist or is not intended for public distribution. Are any of these limitations necessary? Would they be sufficient to prevent circumvention?

The proposed rule would limit the exemption to persons who promote movies, books or plays ''within the[ir] ordinary course of business.'' Should the Commission limit this exemption so that it applies only to persons who are the publisher of a book or the producer, distributor or promoter of a movie or play? Would this limitation unfairly exclude first-time distributors? Should the Commission extend the exemption to any person who promotes movies, books or plays without regard to whether such advertisements are in the ordinary course of business? Should the Commission limit the exemption to entities not directly or indirectly established, financed, maintained, or controlled by any Federal candidate, individual holding Federal office, or any political committee, including political party committees? Does the Commission have the statutory authority to promulgate the exemption without it being conditioned on the promotional communications not PASOing a Federal candidate? The Commission seeks comment on whether such communications in the past have in fact PASOed a Federal candidate.

The Commission also seeks information as to whether any persons refrained from advertising movies, books or plays on television or radio during the 2003–2004 election cycle because of concerns that advertisements would violate electioneering communications rules. How significant a burden would it be for advertisements that run during the 30/60-day window to avoid clearly identifying a candidate? *See* MUR 5467, In the Matter of Michael Moore, *et al.* (where, in response to allegations that the Respondents intended to run advertisements promoting a film during the electioneering communications period that would contain references to clearly identified Federal candidates, the Respondents stated that the distributors of the film had decided prior to the filing of the complaint not to broadcast advertisements for the film during the electioneering communications period that would contain a reference to any clearly identified Federal candidate).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the changes proposed in the electioneering communications regulation would only affect individuals and a small number of non-profit organizations. First, the proposed changes to the definition of ''publicly distributed'' would only affect the small number of advertisements that are run on broadcast, cable or satellite TV or radio where the airtime is donated without charge. To the extent this proposed rule affects media organizations donating the time or running their own programming, they do not fall within the definition of ''small business.'' There are very few small businesses or organizations that receive donated time for advertising and might be affected by the proposed rule. Second, the proposed changes to the exemption for communications paid for by section 501(c)(3) non-profit organizations would not affect a substantial number of small organizations because these organizations may not be able to afford expensive radio and television advertising and, to the extent they can, they are already limited in what

campaign activity they may engage in under the Internal Revenue Code. The changes in this proposed rule affect only communications made by these organizations that promote, support, attack or oppose a Federal candidate within a limited window of time before a Federal election. There are not a substantial number of small organizations that make such communications. Therefore, the proposed rule will not affect a substantial number of small organizations.

List of Subjects in 11 CFR Part 100

Elections.

For reasons set out in the preamble, Subchapter A of Chapter 1 of title 11 of the Code of Federal Regulations would be amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for 11 CFR part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.29 would be amended by revising paragraph (b)(3)(i), the introductory text of paragraph (c), and paragraphs (c)(5) and (c)(6), and by adding new paragraph (c)(7), to read as follows:

§ 100.29 Electioneering communication (2 U.S.C. 434(f)(3)).

* * * * *

(b) * * *

(3)(i) *Publicly distributed* means aired, broadcast, cablecast or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system.

* * * * *

(c) The following communications are exempt from the definition of *electioneering communication.* Any communication that:

* * * * *

(5) Is paid for by a candidate for State or local office in connection with an election to State or local office, provided that the communication does not promote, support, attack or oppose any Federal candidate;

(6) Is paid for by any organization operating under section 501(c)(3) of the Internal Revenue Code of 1986, provided that:

(i) The communication does not promote, support, attack or oppose any Federal candidate; and

(ii) The organization is not directly or indirectly established, financed, maintained, or controlled by one or more Federal candidates, or individuals holding Federal office. Nothing in this section shall be deemed to supersede the requirements of the Internal Revenue Code for securing or maintaining 501(c)(3) status; or

(7) Promotes a movie, book, or play, provided that the communication is within the ordinary course of business of the person that pays for such communication, and such communication does not promote, support, attack or oppose any Federal candidate.

Dated: August 18, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–16785 Filed 8–23–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2004–17005; Notice No. 05–07]

RIN 2120–AI17

Washington, DC Metropolitan Area Special Flight Rules Area; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the docket number and an incorrect reference in the proposed rule, ''Washington, DC Metropolitan Area Special Flight Rules Area,'' published in the **Federal Register** of August 4, 2005.

DATES: The comment period will close on November 2, 2005.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Airspace and Rules, Office of System Operations and Safety; telephone (202–267–8783).

Correction

In FR Doc. 05–15375 beginning on page 45250 in the **Federal Register** of August 4, 2005, make the following corrections.

1. On page 45250, in the first column, in the fourth line of the heading, ''Docket No. FAA–2003–17005'' should have read, ''Docket No. FAA–2004–17005.''

2. On page 45250, in the first column, in the **''ADDRESSES''** paragraph, in the third and fourth lines, ''identified by Docket Number FAA–2003–17005'' should have read, ''identified by Docket Number FAA–2004–17005.''

3. On page 45250, in the third column, under ''Sensitive Security Information,'' in the fourth and fifth lines, ''(identified as docket number FAA–2003–17005)'' should have read, ''(identified as docket number FAA–2004–17005).''

§ 93.43 [Corrected]

4. On page 45261, in the center column, in § 93.43(a)(1), ''49 U.S.C. 1562 subpart A'' should have read, ''49 CFR part 1562 subpart A.''

Issued in Washington, DC, on August 19, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–16781 Filed 8–23–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 5162]

RIN 1400–AC13

Secondary School Student Exchange Programs; Correction

AGENCY: State Department.

ACTION: Proposed rule; correction.

SUMMARY: The Department of State published a document in the **Federal Register** of August 12, 2005, (70 FR 47152) concerning a proposed rule on regulations for secondary school students in the Exchange Visitor Program set forth at 22 CFR 62.25. The document contained omitted information regarding the requirements of criminal background checks on all program sponsor officers, employees, representatives, agents, and volunteers under paragraph (d)(1) and student orientation requirements under paragraph (g)(1).

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Office of Exchange Coordination, Bureau of Educational and Cultural Affairs, Department of State 202–203–5029; Fax 202–203–5087.

PART 62—[CORRECTED]

§ 62.25 [Corrected]

Corrections

1. In the **Federal Register** of August 12, 2005, 70 FR 47152, Public Notice 5155, correct § 62.25(d)(1) and (g)(1) to read as follows:

§ 62.25 Secondary school students.

* * * * *

(d) * * *

(1) Are adequately trained and supervised and have successfully completed a criminal background check;

* * * * *

(g) * * *

(1) A written summary of all operating procedures, rules, and regulations governing student participation in the exchange visitor program including information regarding the reporting of all instances of alleged sexual abuse or exploitation.

* * * * *

Dated: August 15, 2005.

Stanley S. Colvin,

Director, Acting, Office of Exchange Coordination, Department of State.

[FR Doc. 05–16827 Filed 8–23–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 24 and 27

[Notice No. 51]

RIN 1513–AB00

Certification Requirements for Imported Natural Wine (2005R–002P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; cross-reference to temporary rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the Alcohol and Tobacco Tax and Trade Bureau is issuing a temporary rule implementing the new certification requirements regarding production practices and procedures for imported natural wine contained in section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004, which amended section 5382 of the Internal Revenue Code of 1986. In this notice of proposed rulemaking, we are soliciting comments from all interested parties on the implementation of these new certification requirements. The text of the regulations in the temporary rule published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of the proposed regulations.

DATES: Comments must be received on or before October 24, 2005.

ADDRESSES: You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 51, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm*. An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov*. Federal e-rulemaking portal; follow instructions for submitting comments.

You may view copies of any comments we receive about this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of this notice and any comments online at *http://www.ttb.gov/alcohol/rules/index.htm*.

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Gail Davis, International Trade Division, Alcohol and Tobacco Tax and Trade Bureau (202–927–8110).

SUPPLEMENTARY INFORMATION:

Background

In the Rules and Regulations section of this issue of the **Federal Register**, we publish a temporary rule setting forth regulations to implement section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. 108–429, 118 Stat. 2434 (''the Act''), signed by President Bush on December 3, 2004. Section 2002 of the Act revised section 5382(a) of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5382(a), which sets forth standards regarding what constitutes proper cellar treatment of natural wine. The revision of section 5382(a) took effect on January 1, 2005, and includes new certification requirements for imported natural wine produced after December 31, 2004. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the IRC provisions relating to wine.

The temporary regulations published elsewhere in this issue of the **Federal Register** involve amendments to parts 4, 24, and 27 of the TTB regulations (27 CFR parts 4, 24, and 27). The text of the temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Public Participation

Comments Sought

We request comments from everyone interested. We are particularly interested in comments on the effect these regulatory requirements might have on U.S. importers who do not obtain their wine directly from foreign producers, and we would welcome any suggestions for alternative approaches that would be consistent with the restrictions on disclosing taxpayer and return information in 26 U.S.C. 6103. We are particularly interested in comments on the effect these regulatory requirements might have on U.S. importers who do not obtain their wine directly from foreign producers. All comments must reference Notice No. 51 and must include your name and mailing address. They must be legible and written in language acceptable for public disclosure. Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We regard all comments as originals.

Confidentiality

All comments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Submitting Comments

You may submit comments in any of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section of this document.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation ensures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference Notice No. 51 on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this document on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the ''Send comments via email'' link under Notice No. 51.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Public Disclosure

You may view copies of the temporary rule, this document, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our librarian at the above address or telephone 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post the temporary rule, this document, and any comments we receive on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this document and the submitted comments, visit *http://www.ttb.gov/alcohol/rules/index.htm*. Select the ''View Comments'' link under this document's number and title to view the posted comments.

Paperwork Reduction Act

The collections of information contained in the temporary rule were submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Pending the review of public comments, OMB has approved the information collections under control number 1513–0119. 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.

The collections of information in this regulation are in § 4.45 and § 27.140. The first information collection involves consumer information under the Federal Alcohol Administration Act. The second information collection is required by the Internal Revenue Code of 1986 in connection with the importation of wine from foreign countries. Failure to provide the required information may result in administrative sanctions against the importer. The likely respondents are individuals and business or other for-profit institutions, including partnership, associations, and corporations.

- Estimated total annual reporting and/or recordkeeping burden: 6,600 hours.
- Estimated average annual burden per respondent/recordkeeper: 1.65 hours.
- Estimated number of respondents and/or recordkeeping: 4,000.
- Estimated annual number of responses: 20,000.

Comments on the collection of information may be sent by e-mail to OMB at *Alexander_T._Hunt@omb.eop.gov*, or by paper mail to Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to TTB by any of the methods previously described. Comments should be submitted within the time frame that comments are due regarding the substance of the regulation.

Comments are invited on: (a) Whether the collections of information are 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 information collection burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimate of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The only new regulatory requirements involve reporting and recordkeeping and, as described above, the burdens associated with theses requirements are expected to be minimal. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, we will submit this notice of proposed rulemaking to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Executive Order 12866

We have determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

The principal author of this document was Jennifer K. Berry, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau. However, other personnel participated in its development.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 4, 24, and 27 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.45 is amended by revising the section heading, designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 4.45 Certificates of origin, identity and proper cellar treatment.

* * * * *

[The text of proposed § 4.45 is the same as the text of § 4.45 as set forth in the temporary rule published elsewhere in this issue of the **Federal Register**.]

PART 24—WINE

3. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

4. Section 24.301 is amended by removing the word ''and'' at the end of paragraph (i), removing the period at the end of paragraph (j) and adding, in its place, a semicolon followed by the word ''and'', and adding a new paragraph (k) to read as follows:

§ 24.301 Bulk still wine record.

* * * * *

[The text of proposed § 24.301 is the same as the text of § 24.301 as set forth in the temporary rule published elsewhere in this issue of the **Federal Register**.]

5. Section 24.302 is amended by removing the word ''and'' at the end of paragraph (h), removing the period at the end of paragraph (i) and adding, in its place, a semicolon followed by the word ''and'', and adding a new paragraph (j) to read as follows:

§ 24.302 Effervescent wine record.

* * * * *

[The text of proposed § 24.302 is the same as the text of § 24.302 as set forth in the temporary rule published elsewhere in this issue of the **Federal Register**.]

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

6. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6302, 7805.

7. Subpart I, Importer's Records and Reports, is amended by adding a new § 27.140 to read as follows:

§ 27.140 Certification requirements for wine.

* * * * *

[The text of proposed § 27.140 is the same as the text of § 27.104 as set forth in the temporary rule published elsewhere in this issue of the **Federal Register**.]

Signed: August 4, 2005.

John J. Manfreda,

Administrator.

Approved: August 4, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 05–16771 Filed 8–23–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 94

[OJP (OJP)—Docket No. 1368]

RIN 1121–AA63

International Terrorism Victim Expense Reimbursement Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Office of Justice Programs (''OJP'') proposes the following regulations to implement provisions of the Victims of Crime Act of 1984 (the ''VOCA'') (42 U.S.C. 10601 *et seq.*), which authorize the Director of the Office for Victims of Crime (''OVC''), a component of OJP, to establish an International Terrorism Victim Expense Reimbursement Program (hereinafter referred to as the ''ITVERP'') to reimburse eligible ''direct'' victims of acts of international terrorism that occur outside the United States for ''expenses associated with that victimization.''

DATES: Interested parties are invited to submit written comments on these proposed regulations by October 24, 2005.

ADDRESSES: Please address all comments regarding these proposed regulations, by U.S. mail, to: ITVERP, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531; by telefacsimile (fax), on: 202–514–2940; or by e-mail, to: *ITVERP@usdoj.gov*. To ensure proper handling, please reference OJP Docket No. 1368 on your correspondence. You may view an electronic version of this proposed rule at *www.regulations.gov*, and you may also comment by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include OJP Docket No. 1368 in the subject box.

FOR FURTHER INFORMATION CONTACT: Carolyn Hightower, Principal Deputy Director, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531; by telephone, at: 1–800–363–0441; or by e-mail, at: *ITVERP@usdoj.gov*.

SUPPLEMENTARY INFORMATION: As authorized by the VOCA, OVC generally provides federal financial assistance to states for the purpose of compensating and assisting victims of crime, provides funds for training and technical assistance services for victims of federal crimes, and provides funding and services for victims of terrorism and mass violence. This program is funded by fines, fees, penalty assessments, and bond forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury.

These proposed regulations concern the administration of the ITVERP, as authorized by a 2000 VOCA amendment codified at 42 U.S.C. 10603c (the ''Statute'').

I. Background

Over the years, hundreds of nationals of the United States, and officers and employees of the U.S. government, have been killed or injured in heinous acts of international terrorism occurring outside the United States. Victims of acts of international terrorism occurring outside the United States face unique obstacles in securing assistance, compensation, and support, which is more readily available to victims of violent crime and domestic or international terrorism occurring within U.S. borders. Victims and family members often face immediate needs, such as covering medical care, funeral and burial, short-term lodging, and emergency transportation expenses. Language and cultural barriers can impair victims' ability to secure appropriate support. Moreover, resources for victim assistance vary widely from one country to the next. Many of the countries that have established victim reimbursement programs compensate only their own citizens, leaving American citizens without benefits. Although OVC provides funding to states to administer victim compensation programs, the programs administered by each state vary considerably; survivors of the same act of international terrorism occurring abroad may be residents of many different states, and thus receive different levels of compensation for similar injuries. Partially in recognition of this disparity of treatment, VOCA was amended so that states shall no longer be required to compensate victims of international terrorism occurring outside the United States, and the federal government shall oversee an expense reimbursement program for these victims. *See* Victims of Trafficking Violence Protection Act, Pub. L. 106–386, div. C, § 2003(c)(1), 114 Stat. 1464, 1544 to 1546; USA PATRIOT Act, Pub. L. 107–56, tit. VI, subtit. B, § 624(c), 115 Stat. 272, 373.

1. Eligibility

To be eligible to receive a reimbursement under this program, an individual victim of international terrorism abroad must be (as of the date on which the act of international terrorism occurred) either a national of the United States or an officer or employee of the U.S. government, which could include foreign nationals working for the U.S. government who may be killed or injured in an international terrorist attack. The term ''national of the United States'' has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)). The term ''officer or employee of the United States Government'' is defined in § 94.12 of these proposed regulations.

In addition, the Statute expressly requires that the individual victim must have suffered ''direct physical or emotional injury or death as a result of an act of international terrorism occurring on or after December 21, 1988, with respect to which an investigation or prosecution was ongoing or was commenced after April 24, 1996.'' No victim, however (or victim's family) may recover under this subpart, if the victim is found to be ''criminally culpable'' for the terrorist act. For the purposes of this program, the Attorney General shall determine whether there is a reasonable indication that an act of international terrorism has occurred.

2. Direct Injury

The Statute provides that a victim eligible for reimbursement is ''a person who suffered direct physical or emotional injury or death'' as a result of an act of international terrorism. Pursuant to this requirement of ''direct injury,'' individuals present during the act of terrorism, as well as qualifying emergency responders who otherwise meet the eligibility requirements and deal with the immediate aftermath of the event, are covered. Accordingly, under the Statute, family members who were not present during the act of terrorism would not be ''direct[ly]'' injured and therefore could be reimbursed only on behalf of a victim who was present, and not in their own right. An analogous provision of VOCA, however, relating to ''direct harm,'' recognizes that family members also can be ''direct[ly]'' injured when the immediate victim at the time of or as a result of the act is a minor, incompetent, incapacitated, or is killed. *See generally* 42 U.S.C. 10607(e)(2). These regulations essentially incorporate that recognition into the eligibility provisions.

3. Determination of Reasonable Indication of Act of International Terrorism

The determination that there is a reasonable indication that an act of international terrorism has occurred will ordinarily be made by the Attorney General, as soon as is practicable. The Attorney General may delegate the authority to make this determination, pursuant to 5 U.S.C. 301 and 28 U.S.C. 510. The Attorney General or official to whom authority is delegated will consult with the Director of National Intelligence, or such official to whom authority is delegated, in making this determination. In certain instances in which such a determination is not made until after a significant amount of time has passed, the Director of OVC may, at his discretion, extend the deadline for filing a claim.

In all cases, notice of the Attorney General's determination that there is a reasonable indication that an act of international terrorism has occurred, which would make reimbursement available under the ITVERP, will be posted on the OVC Web site at *www.ovc.gov*. Note: The determination that there is a reasonable indication that an act of international terrorism has occurred is only for the purposes of determining eligibility for reimbursement of expenses under this program. Such a determination should not be understood to apply in any other proceeding or matter, nor should it create any inference that prosecution is warranted.

4. Expense-Based Reimbursement Program

The Statute provides that eligible victims of international terrorism may be reimbursed ''for expenses associated with that victimization.'' The language of the Statute restricts the ITVERP program to one that directly reimburses victims for actual out-of-pocket expenses. As shown in a chart appended to this regulation, there are five major categories of expenses for which claimants can seek reimbursement under the ITVERP: (1) Medical, including dental and rehabilitation costs; (2) mental health care; (3) property loss, repair, and replacement; (4) funeral and burial costs; and (5) miscellaneous expenses. Thus, under this proposed rule, reimbursement is not available for lost wages or non-monetary losses, such as for pain and suffering, loss of enjoyment of life, loss of consortium, etc.

5. Submission of Claims

In order to be eligible for payment, either a victim or an individual legally designated to represent a victim must submit application materials, that will have been approved in advance by the Office of Management and Budget (''OMB''). These materials are designed to be simple, but ordinarily will require submission of sufficient information to determine eligibility under the Statute and these regulations, legally justify a claim and, as appropriate, verify unreimbursed expenses incurred. It is anticipated that all such materials will be available electronically via the OVC Web site. Because the Statute authorizes that reimbursement may be made to victims of acts of international terrorism that occurred as early as December, 1988, there will likely be cases in which victims no longer have the original receipts for items or services for which they are seeking reimbursement. In cases of international terrorism that occurred before the establishment of the ITVERP (and also in cases in which the records have been destroyed or lost), at the discretion of the Director, OVC may accept an itemized list of expenses. In such cases, the victim, or his representative, must certify that original receipts are unavailable, and attest that the items and amounts submitted in the list are true and correct to the best of claimant's knowledge.

Other individuals, such as friends, family members, or attorneys, may assist the victim or representative in preparation of the application. But, in no instance (with a limited exception for interim emergency payments) shall individuals who do not meet the definition of a ''victim'' be allowed to file a claim or accept payment under a claim, unless that individual is a representative of the victim. OVC will communicate directly with the appropriate claimant concerning the disposition of each claim, fully explain reasons for denial of any claim, and provide referrals of alternate sources of assistance, as appropriate.

If necessary, a victim may submit supplemental documentation requesting payment for additional expenses after the initial claim is filed. Any intentional false claim for reimbursement may be subject to prosecution under 18 U.S.C. 1001 (false statement made to the United States Government).

6. Interim Emergency Payments

Recognizing that victims of international terrorism abroad may have difficulty accessing the resources needed to address immediate financial needs, OJP has included a provision in

the proposed ITVERP regulations that would allow victims to apply for immediate partial reimbursement. A victim may apply for an interim emergency payment in cases in which the time that it would take for OVC to do a complete review of a claim would cause substantial hardship. Such payment may be used to cover immediate expenses such as those of medical care, funeral and burial, short-term lodging, and emergency transportation.

7. Limitations on Award Amounts

A chart detailing the categories of expenses and applicable limits may be found below, at the end of these regulations.

8. Collateral Sources

Under the terms of the Statute and Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, the amount of expenses reimbursed to a victim must be reduced by any amount of reimbursement that the victim receives under Title VIII in connection with the same act of international terrorism. OJP looked at the types of compensation and benefits that are considered collateral sources under Title VIII, 10 U.S.C. 1051(b), which provides that—

> Any compensation otherwise payable to a person under this section in connection with any disability or death shall be reduced by any amount payable to such person under any other program funded in whole or in part by the United States in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

Consistent with this section, OJP has determined that sources that provide reimbursement for specific expenses under the ITVERP—e.g., health, property, and funeral insurance—are considered collateral sources. Life insurance proceeds are not considered a collateral source, as they do not compensate for specific expenses. This definition of collateral sources is consistent with other provisions relating to crime victim reimbursement programs under VOCA.

Any lump sum payment from the United States or a foreign government source that provides general compensation will be considered a collateral source, unless that payment is in the nature of reimbursement for a specific category of expenses that is not covered under the ITVERP. For example, if a claimant receives payment from a government to provide compensation for a claimant's car that is destroyed as a result of an act of international terrorism, such payment is not considered a collateral source under the ITVERP, which does not reimburse for that particular expense.

In cases in which another organization chooses to provide supplemental reimbursement in a certain category, beyond the ITVERP limit in that category, the supplemental reimbursement will not be considered a collateral source, and thus will not reduce the amount that the claimant receives from the ITVERP. For example, if reimbursement in the category of ''mental health'' were limited to 12 months, state compensation programs providing additional compensation in excess of the limit under ITVERP would not be counted as collateral sources. Thus, for example, if an eligible victim's mental health expenses extended beyond 12 months, and a state wished to reimburse him for an additional period of time, OJP would not consider the state reimbursement to be a collateral source, and would not reduce the award under the ITVERP. The victim could receive the maximum reimbursement within that category under the ITVERP in addition to the state reimbursement.

9. Limitations on Eligibility for Reimbursement

The Statute provides that reimbursement will be denied to ''any individual who is criminally culpable for the terrorist act.'' Thus, no victim (or family member thereof) who is responsible for an act of international terrorism will be allowed to be reimbursed. For example, neither a ''suicide bomber'' nor his family will be reimbursed following his injury or death.

Similarly, reimbursement may be reduced or denied, at the discretion of the Director, to specific individuals whose illegal or grossly reckless conduct at the time of the act of international terrorism materially contributed to their death or injury; this is not intended to apply to individuals such as international relief and humanitarian aid workers within organizations whose primary purpose is to provide charitable aid or a service in the public interest—often under dangerous conditions.

10. Appeal Hearings

If, after conducting a review of a claimant's written appeal, the Assistant Attorney General determines that an oral hearing is warranted, the hearing may be conducted by an individual to whom the Assistant Attorney General has delegated that responsibility.

11. Consultation With External Entities

Prior to drafting these regulations, OJP consulted with individuals and working groups comprised of federal and state government officials, victims of international terrorism, victim advocates, and non-governmental victim organizations on various concepts related to compensation for victims of international terrorism. OJP officially convened working group meetings in June 2001 and February 2002. In addition, many other discussions, informal meetings, and draft reviews were held by OJP throughout the development of these regulations, from February 2001 until the publication of these proposed regulations in the **Federal Register**. Federal government agencies participating in these working groups and discussions included the Department of State, the Federal Bureau of Investigation, the United States Agency for International Development, the Department of Defense, the Office of Personnel Management, and the National Transportation Safety Board. State crime victim compensation program representatives from New Jersey, Virginia, Oklahoma, and Idaho also participated in working group meetings, as did a representative from the National Association of Crime Victim Compensation Boards. OJP also sought input from victims who would be eligible to apply for this program.

Whenever possible, OJP attempted to address the concerns raised during the working group sessions and in meetings with various groups. For example, in response to concerns that it would cause hardship for some victims who may be unable to produce receipts for expenses incurred, the proposed ITVERP regulations allow, at the discretion of the Director, victims to certify that the receipts are unavailable, and to provide an itemized list of expenses.

In certain instances, however, concerns were raised that could not be fully addressed, such as the suggestion that, in drafting regulations for the ITVERP, OJP replicate the September 11th Victim Compensation Fund of 2001. The statute authorizing the September 11th Victim Compensation Fund is radically different, however, from the statute authorizing the ITVERP, in the scope of compensation that is mandated. For instance, the September 11th Victim Compensation Fund was not an expense-based program, as the ITVERP is required by statute to be. In noting that various individuals and groups participated in meetings and discussions with OJP staff, OJP does not wish to imply that these individuals or groups have or have not endorsed the

provisions contained within these proposed regulations.

II. Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Exec. Order No. 12866, section 1(b), 58 FR 51735 (Sept. 30, 1993), Principles of Regulation. OJP has determined that this rule is a ''significant regulatory action'' under Executive Order No. 12866, and accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Exec. Order No.13132, 64 FR 43255 (Aug. 4, 1999), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Cost/Benefit Assessment

This rule has no cost to state, local, or tribal governments, nor to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury, and set aside in the Antiterrorism Emergency Reserve Fund, whose funds may not be obligated in an amount above $50 million in any given year. The cost to the federal government consists both of administrative expenses and amounts reimbursed to victims. Both types of costs depend on the number of claimants, prospective as well as retroactive. Because of the statutory cap on spending and the number of potential retroactive claimants (approximately 900), it is expected that the program may spend the statutory maximum of $50 million each year for the first 2–3 years of the program's operation.

Regulatory Flexibility Act

These proposed regulations will not have a significant economic impact on a substantial number of small entities. These regulations have no cost to state, local, or tribal governments, nor to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and bond forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury. Therefore, an analysis of the impact of these regulations on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1995

The collection of information requirements contained in these proposed regulations have been submitted to the Office of Management and Budget, pursuant to the Paperwork Reduction Act (44 U.S.C. 3506). Applicants seeking reimbursement from this program will be required to submit an official application form (the International Terrorism Victim Expense Reimbursement Program Application), that has been created by OJP. This application is a new information collection instrument that will be used to collect necessary information from and about the victims and claimants regarding expenses incurred by them, to be used by OJP in making a reimbursement determination. The total number of respondents (including both direct victims and family members) for this collection is estimated to be 2,000. This represents the estimated number of claimants who are currently eligible to request reimbursement under the ITVERP. The total initial public burden associated with this initial information collection is estimated to be approximately 1,500 hours. The amount of time for an average respondent to respond/reply is estimated to be approximately 45 minutes.

Written comments regarding the application form should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503, (202) 395–5806. Suggestions or questions regarding the application form, including requests for copies of the proposed information collection instrument with instructions, should be directed by U. S. mail, to: ITVERP, Office for Victims of Crime, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531; by facsimile at: (202) 514–6383; or by e-mail, at: *ITVERP@usdoj.gov*.

Your comments are solicited 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, including whether the information will have practical utility; (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 making available appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure full consideration by OMB, comments should be received within 30 days of publication. This does not affect the deadline for the public to submit comments to the Department on the proposed regulations.

Unfunded Mandates Reform Act of 1995

This rule will not 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, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Part 94

Administrative practice and procedures; International terrorism; Victim compensation.

Accordingly, for the reasons set forth in the preamble, Title 28 of the Code of Federal Regulations is proposed to be amended to add a new Part 94, to read as follows:

PART 94—CRIME VICTIM SERVICES

Subpart A—International Terrorism Victim Expense Reimbursement Program

Introduction

Sec.
94.11 Purpose.
94.12 Definitions.
94.13 Terms.

Coverage

94.21 Eligibility.
94.22 Categories of expenses.
94.23 Amount of reimbursement.
94.24 Determination of award.
94.25 Collateral sources.

Program Administration

94.31 Application procedures.
94.32 Application deadline.
94.33 Investigation and analysis of claims.

Payment of Claims

94.41 Interim emergency payment.
94.42 Repayment and waiver of repayment.

Appeal Procedures

94.51 Request for reconsideration.

Authority: 42 U.S.C. 10603C, 10604.

Subpart A—International Terrorism Victim Expense Reimbursement Program

Introduction

§ 94.11 Purpose.

The purpose of this subpart is to implement the provisions of VOCA, Title II, Sec. 1404C (42 U.S.C. 10603C), which authorize the Director (Director), Office for Victims of Crime (OVC), a component of the Office of Justice Programs (OJP), to establish a program to reimburse eligible victims of acts of international terrorism that occur outside the United States, for expenses associated with that victimization.

§ 94.12 Definitions.

The following definitions shall apply to this subpart:

(a) *Child* means any biological or legally-adopted child, or stepchild, of a deceased victim, who, at the time of the victim's death, is

(1) Under the age of 18 years; or

(2) Over 18 years of age and a student, as defined in 5 U.S.C. 8101.

(b) *Claimant* means a victim, or his representative, who is authorized to sign and submit an application, and receive payment for reimbursement, if appropriate.

(c) *Collateral sources* means sources that provide reimbursement for specific expenses compensated under this subpart, including, without limitation, property, health, disability, or other insurance for specific expenses; Medicare or Medicaid; worker's compensation programs; military or veterans' benefits of a compensatory nature; vocational rehabilitation benefits; restitution; and other state, federal, foreign, and international compensation programs, except that any compensation received under this subpart shall be reduced by the amount of any lump sum payment whatsoever, received from, or in respect of the United States or a foreign government, unless the claimant can show that such payment was for a category of expenses not covered under this subpart.

(d) *Deceased* means persons who are dead or are missing and presumed dead.

(e) *Dependent* has the meaning given in 26 U.S.C. 152. If the victim was not required by law to file a U.S. federal income tax return for the year prior to the act of international terrorism, a person shall be deemed to be a victim's dependent if he was reliant on the income of the victim for over half of his support in that year.

(f) *Funeral and burial* means those activities involved in the disposition of the remains of a deceased victim, to include preparation of the body and body tissue, refrigeration, transportation, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably-associated activities, including travel for not more than two family members.

(g) *Incapacitated* means substantially impaired by mental illness or deficiency, or by physical illness or disability, to the extent that personal decision-making is impossible.

(h) *Incompetent* means unable to care for oneself because of mental illness or disability, mental retardation, or dementia.

(i) Pursuant to 42 U.S.C. 10603C, *international terrorism* has the meaning given in 18 U.S.C. 2331. As of the date of these regulations, the statute defines the term to mean activities that—

(1) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States or of any state;

(2) Appear to be intended—

(i) To intimidate or coerce a civilian population;

(ii) To influence the policy of a government by intimidation or coercion; or

(iii) To affect the conduct of a government by mass destruction, assassination, or kidnaping; and

(3) Occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

(j) *Legal guardian* means legal guardian, as the term is defined under the laws of the jurisdiction of which the ward is or was a legal resident, except that if the ward is or was a national of the United States, the legal guardianship must be pursuant to an order of a court of competent jurisdiction of or within the United States.

(k) *Medical expenses* means costs associated with the treatment, cure, or mitigation of a disease, injury, or mental or emotional condition that is the result of an act of international terrorism. Allowable medical expenses include, without limitation, compensation for eyeglasses or other corrective lenses, dental services, rehabilitation costs, prosthetic or other medical devices, prescription medication, and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered.

(l) *Mental health care* means mental health care provided by a person who meets professional standards to provide these services in the jurisdiction in which the care is administered.

(m) *National of the United States* has the meaning given in section 101(a) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22)). As of the date of these regulations, the statute defines the term to mean ''a citizen of the United States, or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.''

(n) *Officer or employee of the U.S. government.* (1) *Officer* of the United States government has the meaning given in 5 U.S.C. 2104.

(2) *Employee* of the United States government means any person who:

(i) Is an employee of the United States government under federal law; or

(ii) Receives a salary or compensation of any kind from the United States government for personal services directly rendered to the United States, similar to those of an individual in the United States civil service, or is a contractor of the United States government (or an employee of such contractor) rendering such personal services

(o) *Outside the United States* means outside any state of the United States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other possession or territory of the United States.

(p) *Parent* means a biological or legally-adoptive parent, or stepparent, unless his parental rights have been terminated in the jurisdiction where the child is or was a legal resident, except that if the child or either parent is a national of the United States, the termination must be pursuant to an order of a court of competent jurisdiction of or within the United States.

(q) *Property loss* refers to items of personal property (other than medical devices, which are included in the category of ''medical expenses'') that are lost, destroyed, or held as evidence.

(r) *Rehabilitation costs* includes reasonable costs for the following: Physiotherapy; occupational therapy;

counseling, and workplace, vehicle, and home modifications.

(s) *Representative* means a family member or legal guardian authorized to file a claim on behalf of a victim who is less than18 years of age, incompetent, incapacitated, or deceased, except that no person shall be considered a representative who was criminally culpable for the act of international terrorism. In the event that no family member or legal guardian is available to file a claim for an interim emergency payment on behalf of a victim, under § 94.41, a U.S. consular officer or U.S. embassy official within the country may act as a representative, consistent with any limitation on his authority contained in 22 CFR 92.81(b).

(t)(1) *Victim* has the meaning given in 42 U.S.C. 10603c(a)(3)(A). Generally speaking, the following shall be understood to be included within the meaning of victim if they are nationals of the United States, or officers or employees of the United States, and they suffered a direct physical or emotional injury as a result of an act of international terrorism occurring outside the United States: Individuals who were present during the act; individuals who were present during the immediate aftermath of the act; or emergency responders who assisted in efforts to search for and recover other victims.

(2) In the event that a victim, as defined in paragraph (t)(1) of this section, is under 18 years of age at the time of the act, is (at the time of or as a result of the act) incompetent or incapacitated, or dies as a result of the act, ''victim'' shall include the following members of his family: His spouse, parents, children, and siblings; or another person, at the discretion of the Director.

§ 94.13 Terms.

The first three provisions of 1 U.S.C. 1 (rules of construction) shall apply to this subpart.

Coverage

§ 94.21 Eligibility.

(a) Except as provided in paragraphs (b) and (c) of this section, reimbursement of qualified expenses under this subpart is available to a victim of international terrorism or his representative, pursuant to 42 U.S.C. 10603c(a)(3)(A). For purposes of eligibility for this program only, the Attorney General shall determine whether there is a reasonable indication that an act was one of international terrorism, within the meaning of that section.

(b) Reimbursement shall be denied to any claimant if the Director, in consultation with appropriate Department of Justice (DOJ) officials, determines that there is a reasonable indication that either the victim with respect to whom the claim is made or the claimant, was criminally culpable for the act of international terrorism.

(c) Reimbursement may be reduced or denied to a claimant if the Director, in consultation with appropriate DOJ officials, determines that the victim with respect to whom the claim is made contributed materially to his own death or injury by—

(1) Engaging in conduct that violates U.S. law or the law of the jurisdiction in which the act of international terrorism occurred;

(2) Acting as a mercenary or ''soldier of fortune'';

(3) (As a non-U.S. government employee), acting as an advisor, consultant, employee, or contractor, in a military or political capacity—

(i) For a rebel or paramilitary organization;

(ii) For a government not recognized by the United States; or

(iii) In a country in which an official travel warning issued by the U.S. Department of State related to armed conflict was in effect at the time of the act of international terrorism; or

(4) Engaging in grossly reckless conduct.

§ 94.22 Categories of expenses.

(a) The following categories of expenses, generally, may be reimbursed, with some limitations, as noted in § 94.23:

(1) Medical care;

(2) Mental health care;

(3) Property loss;

(4) Funeral and burial; and

(5) Miscellaneous expenses (including, but not limited to, temporary lodging, emergency travel, and transportation).

(b) Under this subpart, the Director shall not reimburse for attorneys' fees, lost wages, or non-economic losses (such as pain and suffering, loss of enjoyment of life, loss of consortium, etc.).

§ 94.23 Amount of reimbursement.

Different categories of expenses are capped, as set forth in the chart in the appendix to this subpart. Those caps may be adjusted, from time to time, by rulemaking. The cap in effect within a particular expense category, at the time that the application is received, shall apply to the award.

§ 94.24 Determination of award.

After review of each application, the Director shall determine the eligibility of the victim or representative and the amount, if any, eligible for reimbursement, specifying the reasons for such determination and the findings of fact and conclusions of law supporting it. A copy of the determination shall be mailed to the claimant at his last known address.

§ 94.25 Collateral sources.

(a) The amount of expenses reimbursed to a claimant under this subpart shall be reduced by any amount that the claimant receives from a collateral source in connection with the same act of international terrorism. In cases in which a claimant receives reimbursement under this subpart for expenses that also will or may be reimbursed from another source, the claimant shall subrogate the United States to the claim for payment from the collateral source up to the amount for which the claimant was reimbursed under this subpart.

(b) Notwithstanding paragraph (a) of this section, when a collateral source provides supplemental reimbursement for a specific expense, beyond the maximum amount reimbursed for that expense under this subpart, the claimant's award under this subpart shall not be reduced by the amount paid by the collateral source, nor shall the claimant be required to subrogate the United States to the claim for payment from the collateral source, except that in no event shall the combined reimbursement under this subpart and any collateral source exceed the actual expense.

Program Administration

§ 94.31 Application procedures.

(a) To receive reimbursement, a claimant must submit a completed application under this program requesting payment based on an itemized list of expenses, and must submit original receipts. In cases involving incidents of terrorism preceding the establishment of this program where claimants may not have original receipts, and in cases in which the claimant certifies that the receipts have been destroyed or lost, the Director may, in his discretion, accept an itemized list of expenses. In each such case, the claimant must certify that original receipts are unavailable and attest that the items and amounts submitted in the list are true and correct to the best of his knowledge.

(b) In the event that it is later determined that a fraudulent

certification was made, the United States may take action to recover any payment made under this section, and pursue criminal prosecution, as appropriate.

§ 94.32 Application deadline.

The deadline for an application is 3 years from the date of the act of international terrorism. At the discretion of the Director, the deadline for filing a claim may be extended to a date not later than 3 years from the date of the determination that there is a reasonable indication that an act of international terrorism has occurred, under § 94.21(a). For claims related to acts of international terrorism that occurred after December 21, 1988, but before [EFFECTIVE DATE OF THE FINAL RULE], the application deadline is 3 years from [EFFECTIVE DATE OF THE FINAL RULE].

§ 94.33 Investigation and analysis of claims.

The Director may seek an expert examination of claims submitted if he believes there is a reasonable basis for requesting additional evaluation. The claimant, in submitting an application for reimbursement, authorizes the Director to release information regarding claims or expenses listed in the application to an appropriate body for review. If the Director initiates an expert review, no identifying information for the victim or representative shall be released.

Payment of Claims

§ 94.41 Interim emergency payment.

(a) Claimants may apply for an interim emergency payment, prior to a determination under § 94.21(a). If the Director determines that such payment is necessary to avoid or mitigate substantial hardship that may result from delaying reimbursement until complete and final consideration of an application, such payment may be made to cover immediate expenses such as those of medical care, funeral and burial, short-term lodging, and emergency transportation.

(b) The amount of an interim emergency payment shall be determined on a case-by-case basis, and shall be deducted from the final award amount.

§ 94.42 Repayment and waiver of repayment.

(a) A victim or representative shall reimburse the program upon a determination by the Director that an interim emergency award or final award was—

(1) Made to an ineligible victim or claimant;

(2) Based on fraudulent information; or

(3) An overpayment.

(b) Except in the case of ineligibility pursuant to a determination by the Director, in consultation with appropriate DOJ officials, under § 94.21(b), the Director may waive such repayment requirement in whole or in part, for good cause, upon request.

Appeal Procedures

§ 94.51 Request for reconsideration.

A victim or representative may, within 30 days after receipt of the determination under § 94.24, appeal the same to the Assistant Attorney General for the Office of Justice Programs, by submitting a written request for review. The Assistant Attorney General may conduct a review and make a determination based on the material submitted with the initial application, or may request additional documentation in order to conduct a more thorough review. In special circumstances, the Assistant Attorney General may determine that an oral hearing is warranted; in such cases, the hearing shall be held at a reasonable time and place.

§ 94.52 Final agency decision.

In cases that are not appealed under § 94.51, the Director's determination pursuant to § 94.24 shall be the final agency decision. In all cases that are appealed, the Assistant Attorney General shall issue a notice of final determination, which shall be the final agency decision, setting forththe findings of fact and conclusions of law supporting his determination.

Appendix to Subpart A of Part 94

International Terrorism Victim Expense Reimbursement Program (ITVERP); Proposed Chart of Expense Categories and Limits

There are five major categories of expenses for which claimants can seek reimbursement under the ITVERP: Medical, including dental and rehabilitation costs; mental health care; property loss, repair, and replacement; funeral and burial costs; and miscellaneous expenses.

Expense categories	Subcategories and conditions	Expense limits
(a) Medical expenses, including dental and rehabilitation costs.	Victim's medical care, including treatment, cure, and mitigation of disease or injury; replacement of medical devices, including, but not limited to, eyeglasses or other corrective lenses, dental services, prosthetic devices, prescription medication; and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered. Victim's cost for physiotherapy; occupational therapy; counseling; workplace, vehicle, and home modifications. For example, if a victim sustains a physical injury, such as blindness or paralysis which would impact his ability to perform current professional duties, physical rehabilitation to address work skills is appropriate.	Up to $50,000.
(b) Mental health care	Victim's (and, when victim is a minor, incompetent, incapacitated, or deceased, certain family members') mental health counseling costs.	Up to 12 months, but not to exceed $5,000.

Expense categories	Subcategories and conditions	Expense limits
(c) Property loss, repair, and replacement	Includes crime scene cleanup, and replacement of personal property (not including medical devices) that is lost, destroyed, or held as evidence.	Up to $10,000 to cover repair or replacement, whichever is less.
(d) Funeral and burial costs	Includes the cost of disposition of remains, preparation of the body and body tissue, refrigeration, transportation of remains, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably associated activities.	Up to $25,000.
(e) Miscellaneous expenses	Temporary lodging up to 30 days, local transportation, telephone costs, etc. Emergency travel: two family members' transportation costs to country where incident occurred to recover remains, care for victim, care for victim's dependents, accompany victim to receive medical care abroad, accompany victim back to U.S., and attend to victim's affairs in host country.	Up to $15,000.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Regina B. Schofield,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 05–16495 Filed 8–23–05; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2003–KY–0001–200410(b); FRL–7958–7]

Approval and Promulgation of Implementation Plans for Kentucky: Regulatory Limit on Potential To Emit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky which incorporates Kentucky rule 401 KAR 52:080 into the Kentucky SIP. The Commonwealth submitted the revision on October 31, 2003. This rule affects sources whose actual emissions are less than 50 percent of the major source threshold whereas the sources' potential to emit (PTE) exceeds the major source threshold. The EPA is also notifying the public that the Agency's conditional approval of Kentucky rule 401 KAR 52:080, as submitted on March 15, 2001, and published on August 15, 2002, is disapproved as of October 15, 2003. In the Final Rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 23, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2003–KY–0001, by one of the following methods:

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

2. *Agency Website: http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail: notarianni.michele@epa.gov.*

4. *Fax:* (404) 562–9019.

5. *Mail:* ''R04–OAR–2003–KY–0001,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

6. *Hand Delivery or Courier:* Deliver your comments to: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2003–KY–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the 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 person 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, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9031. E-mail: *notarianni.michele@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: August 12, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–16803 Filed 8–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[R05–OAR–2005–OH–0002; FRL–7958–4]

Approval and Disapproval of Ohio Implementation Plan for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published June 27, 2005 (70 FR 36901). On June 27, 2005, EPA proposed to disapprove revisions to Ohio rules that provide for use of continuous opacity monitoring data but allow more exceedances of the general opacity limit in cases where the owner of an eligible large coal fired boiler opts to use these data for determining compliance. EPA also proposed to approve other elements of Ohio's rule submittal that clarified Ohio's rules. In response to requests from the Ohio Environmental Protection Agency and from the law firm of Shumaker, Loop & Kendrick, EPA is reopening the comment period through August 24, 2005. All comments received on or before August 24, 2005 will be entered into the public record and considered by EPA before taking final action on the proposed rule.

DATES: Comments must be received on or before August 24, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–OH–0002, to: John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Phone: (312) 886–4447. E-mail: *mooney.john@epa.gov*. Additional instructions to comment can be found in the notice of proposed rulemaking published June 27, 2005 (70 FR 36901).

FOR FURTHER INFORMATION CONTACT: John Summerhays, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 353–4761, E-mail Address: *summerhays.john@epa.gov*.

Dated: August 2, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–16811 Filed 8–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–ME–0007; A–1–FRL–7959–4]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Nitrogen Oxides Exemption Request for Northern Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve an exemption request from the requirements contained in Section 182(f) of the Clean Air Act (CAA or Act) for Northern Maine (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, and portions of Hancock and Waldo Counties). This area, along with the rest of the State of Maine, are part of the Ozone Transport Region (OTR) as provided for in section 184(a) of the Act. Section 182(f) in combination with section 184 (relating to ozone transport regions) of the Act requires States in the OTR, such as Maine, to adopt reasonably available control technology (RACT) rules for major stationary sources of nitrogen oxides (NO_X) and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X. This exemption request, submitted by the State of Maine on March 24, 2005 with supplemental submittals dated April 19, 2005 and June 28, 2005, is based on a demonstration that NO_X emissions in the exemption area are not impacting Maine's nonattainment areas or other nonattainment areas in the OTR during times when elevated ozone levels are monitored in those areas. As such, additional reductions in NO_X emissions from this area beyond what the State regulations already provide for are not necessary for future attainment in any of Maine's ozone nonattainment areas or other ozone nonattainment areas in the OTR. Thus, as provided for in section 182(f)(2), additional NO_X reductions in these areas would constitute excess reductions that can be waived under the Act. This action is being taken under the CAA.

DATES: Written comments must be received on or before September 23, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0007 by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov*.

4. Fax: (617) 918–01661.

5. Mail: ''RME ID Number R01–OAR–2004–ME–0007'', David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Chief, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2004–ME–0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through Regional Material in EDocket (RME), regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Phone: 617–918–1664, Fax: (617) 918–0664, E-mail: *burkhart.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Rulemaking Information

The following outline is provided to aid in locating information in this document.

A. Background and Purpose

On March 24, 2005, Maine Department of Environmental Protection (DEP) submitted an exemption request from the requirements for NO_X control contained in Section 182(f) of the Clean Air Act (CAA or Act) for the Northern Maine area (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, and portions of Hancock and Waldo Counties). On April 19, 2005 and June 28, 2005, Maine DEP submitted additional analyses to EPA justifying its

waiver request, which EPA is using as a basis for this proposal. All submittals are available in the docket.

The area for which Maine is requesting a waiver, along with the rest of the State of Maine, are part of the Ozone Transport Region as provided for in section 184(a) of the Act. In addition, the waiver area is designated unclassifiable/attainment for the 8-hour ozone standard. Section 182(f) in combination with section 184 (relating to ozone transport regions) of the Act requires States in the OTR, such as Maine, to adopt reasonably available control technology (RACT) rules for major stationary sources of nitrogen oxides and to provide for nonattainment area new source review for new sources and modifications that are major for NO_X. This exemption request, is based on a demonstration that NO_X emissions in this area are not impacting Maine's ozone nonattainment areas or any other ozone nonattainment area in the OTR during times when elevated ozone levels are monitored in those areas. As such, additional reductions in NO_X emissions from this area beyond what the State regulations already provide for are not necessary for future attainment in any of Maine's ozone nonattainment areas or other ozone nonattainment area in the OTR. Thus, as provided for in section 182(f)(2), additional NO_X reductions in these areas would constitute excess reductions that can be waived under the Act. A Technical Support Document (TSD) has been prepared for this action. The TSD is available in the docket.

B. Clean Air Act Requirements

The air quality planning requirements for the reduction of NO_X emissions are set out in section 182(f) of the Act. Section 182(f) of the Act requires states with areas designated and classified as moderate nonattainment and above for ozone, or in ozone transport regions, to impose the same control requirements for major stationary sources of NO_X as apply to major stationary sources of volatile organic compounds (VOC). These requirements include the adoption of RACT rules for major stationary sources and nonattainment area NSR for major new sources and major modifications. Section 182(f) provides further that these requirements do not apply for nonattainment areas inside an ozone transport region if EPA determines that reductions of NO_X from such areas would not contribute to net ozone benefits in the OTR. In addition, implementation of NO_X controls may be limited if EPA determines it is necessary to avoid achieving excess reductions. Also, NO_X-related general conformity provisions do not apply in an area that is granted a section 182(f) exemption. The area for which Maine is requesting a NO_X waiver is designated unclassifiable/attainment for the 8-hour ozone standard and does not have any 8-hour ozone conformity requirements.

The area for which Maine DEP has requested a waiver includes the following counties: Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, and Aroostook. Also included in the area requested for a waiver are the portions of Waldo and Hancock Counties that are designated unclassifiable/attainment for the 8-hour ozone standard. In Waldo County, this includes the following towns: Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom, Jackson, Knox, Liberty, Lincolnville, Monroe, Montville, Morrill, Northport, Palermo, Prospect, Searsmont, Searsport, Stockton Springs, Swanville, Thorndike, Troy, Unity, Waldo, and Winterport. In Hancock County, this includes the following towns and townships: Amherst, Aurora, Bucksport, Castine, Dedham, Eastbrook, Ellsworth, Franklin, Great Pond, Mariaville, Orland, Osborn, Otis, Penobscot, Verona, Waltham, Oqiton Township (T4 ND), T3 ND, T39 MD, T40 MD, T41 MD, T32 MD, T34 MD, T35 MD, T28 MD, T22 MD, T16 MD, T8 SD, T9 SD, T10 SD, and T7 SD.

As stated above, each of the counties or partial counties for which Maine DEP is seeking an exemption is within the OTR. For attainment areas within the OTR, the application of NO_X requirements under the CAA may be limited if it is shown that additional NO_X reductions are excess to the attainment needs throughout the region. EPA believes, in the case of these areas in Maine at the northern extremity of the OTR, that NO_X requirements can be waived because the Maine DEP has submitted an acceptable demonstration that additional reductions beyond what the state regulations already provide for are not necessary for the nonattainment areas in the state to attain, because emissions from this area are not contributing to the ozone nonattainment problem in any other nonattainment area in the OTR, and because reductions in this area are not necessary for purposes of showing future attainment anywhere in the OTR. Maine DEP has made this showing through air modeling trajectory analyses, NO_X emission analysis, and meteorological analyses. Most of this same geographic area in Maine received approval by EPA of a similar NO_X waiver request under the 1-hour ozone standard on December 26, 1995 (60 FR 66748). At this time, the 1-hour NO_X waiver remains as approved in 1995. The implementation policy for the 8-hour ozone standard (69 FR 23951) requires areas to request a separate waiver under the 8-hour ozone standard. This is the only area in the OTR that received a NO_X waiver under the 1-hour ozone standard, and is the first area in the OTR to request a NO_X waiver under the 8-hour ozone standard.

C. Scope of Exemptions

If the EPA Administrator determines, under section 182(f) of the Act, that additional reductions of NO_X are excess, the area at issue shall automatically (*i.e.*, a State would not need to submit an exemption request for each requirement) be exempt from the following requirements (as applicable): Inspection and Maintenance program NO_X requirements, the NO_X-related general conformity provisions, the NO_X-related transportation conformity provisions in 40 CFR part 93, NO_X RACT, and nonattainment area NSR for new sources and modifications that are major for NO_X.

1. Inspection and Maintenance (I/M) Program

I/M is not required in any portion of Northern Maine, therefore, EPA's action on this request has no impact on I/M requirements.

2. Conformity

The transportation conformity rule requires emissions analysis of motor vehicle NO_X emissions for ozone nonattainment and maintenance areas in order to determine the conformity of transportation plans and programs to state implementation plan requirements. The waiver area is currently designated unclassifiable/attainment for the 8-hour standard, and does not need to do transportation conformity. General conformity is also not required in this area. Because conformity is not required in this area, EPA's action on this request has no impact on any conformity requirements.

D. Criteria for Evaluation of Section 182(f) Exemption Requests

The criteria established for the evaluation of an exemption request from the section 182(f) requirements are set forth in a memorandum from Stephen D. Page, Director, OAQPS, dated January 14, 2005, and titled: ''*Guidance On Limiting Nitrogen Oxides Requirements Related To 8-Hour Ozone Implementation.*''

E. Summary of State Request

On March 24, 2005, the Maine DEP submitted an exemption request from

the requirements contained in section 182(f) of the CAA for Northern Maine. In all, EPA received three submittals from Maine. The initial request dated March 24, 2005, and a first supplement dated April 19, 2005, and a second supplement dated June 28, 2005.

This exemption request is based on a demonstration that NO_X emissions in this multi-county area are not impacting Maine's two 8-hour ozone nonattainment areas or other 8-hour ozone nonattainment areas in the OTR during times when elevated 8-hour ozone levels are monitored in those areas. As such, additional reductions in NO_X emissions from these counties (*i.e.*, NO_X reductions beyond what the state regulations provide for) are not necessary for the two nonattainment areas in the State to attain and are also not necessary for 8-hour ozone attainment purposes anywhere in the OTR. Under these circumstances, as section 182(f)(2) provides, such additional reductions may be waived as excess reductions.

F. Technical Justification for the Request

Maine submitted a detailed technical analysis showing that NO_X emissions from the proposed NO_X waiver area do not impact either of the two 8-hour nonattainment areas in Maine or any other 8-hour ozone nonattainment in the OTR. The request relies on several different techniques to prove Maine's case, with the primary technique being back trajectories using the HYSPLIT trajectory model.

Maine DEP created back trajectories for each day that experienced an 8-hour ozone exceedance in either of Maine's nonattainment areas during 1998 through 2004 time period. When 8-hour exceedances for a given day were recorded in either of Maine's 8-hour nonattainment areas, back trajectories were run from locations in each of the nonattainment areas. For each ozone exceedance that was analyzed, back trajectories were run for each hour that recorded ozone in excess of 0.08 parts per million, and run for multiple heights in the atmosphere. In all, Maine DEP ran over 1000 back trajectories for 61 separate exceedance days during 1998 to 2004.

Maine then analyzed each of these back trajectories to see if there was potential impact from the NO_X waiver area. These trajectory analyses show convincingly that the source region for Maine's 8-hour ozone exceedances are to the south and west of southern Maine. The trajectories also show convincingly that the proposed NO_X waiver area does not contribute to Maine's 8-hour ozone nonattainment problems. This is identical to the conclusion that was reached for 1-hour ozone exceedances in southern Maine for the 1-hour NO_X waiver approved by EPA in 1995.

In addition, Maine provided NO_X emission inventory data for the entire OTR and additional meteorological analyses to add further evidence that the proposed NO_X waiver area does not contribute to ozone nonattainment in the two nonattainment areas of Maine or anywhere in the OTR. Whenever there are 8-hour ozone exceedances in New Hampshire or Massachusetts, the two states nearest to Maine, the winds are not from Maine. Therefore, Maine does not contribute to ozone nonattainment in Massachusetts, nor New Hampshire, the only two states in the OTR, outside Maine, where it is reasonable to expect that Maine's emissions might potentially contribute to ozone nonattainment. Moreover, EPA has performed extensive air quality modeling throughout the Northeast over the past several years in support of its Clean Air Interstate Rule (CAIR), and the ozone modeling domain used for the CAIR rule covers much of northern Maine. In the CAIR rulemaking, EPA did not find that Maine was significantly contributing to future ozone nonattainment anywhere in the CAIR domain, which includes the rest of the OTR plus most of the eastern half of the United State. Thus, the State of Maine was not included in the CAIR rule. EPA's CAIR modeling plus the data provided in Maine's submittals support this proposed approval of Maine's NO_X waiver request.

EPA's review of this request indicates that a NO_X waiver is justified for Northern Maine. A TSD has been prepared on this action and contains a detailed analysis of Maine's request. EPA is proposing to approve the exemption request for the Northern Maine area from the Section 182(f) NO_X requirements. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this notice.

III. Proposed Action

EPA is proposing to approve the exemption request for the Northern and Western Maine area from the section 182(f) NO_X requirements based upon the evidence provided by the State and the State's compliance with the requirements outlined in the applicable EPA guidance. This action proposes to exempt Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, and portions of Hancock and Waldo counties from the requirements of nonattainment area NSR for new sources and modifications that are major for NO_X, and NO_X RACT on existing sources. If EPA determines based on future air quality analyses that NO_X controls in this area are necessary for ozone attainment purposes, rulemaking may be initiated which may mean that this NO_X exemption no longer applies.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this action, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **SUPPLEMENTARY INFORMATION,** I. General Information section of this action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). The proposed exemption does not create any new requirements, but allows suspension of the indicated requirements for the life of the exemption. 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 suspends certain requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state request to waive certain requirements, 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 this submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a waiver request to require VCS in a 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.*)

List of Subjects in 40 CFR Part 52

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

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

Dated: August 15, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–16814 Filed 8–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0057; FRL–7959–3]

RIN 2060–AM25

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On April 17, 2003, we published the national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid (HCl) production facilities, including HCl production at fume silica facilities (HCl Production NESHAP) (68 FR 19076). We are proposing to amend the existing rule by clarifying certain applicability provisions, emission standards, and testing, maintenance, and reporting requirements. The proposed amendments would also correct several omissions and typographical errors in the final rule. We are proposing the amendments to facilitate compliance and improve understanding of the final rule requirements.

DATES: *Comments.* Comments must be received on or before October 24, 2005.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by September 13, 2005, a public hearing will be held on September 23, 2005.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2002–0057 (formerly Docket ID No. A–99–41), by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air Docket, EPA Docket Center, U.S. EPA West, Mailcode 6102T, Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR–2002–0057. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket. EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0057 and legacy Docket ID No. A–99–41. The official public docket consists of the information related to this action. Not all items are listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the proposed amendments. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the reading room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Public Hearing. If a public hearing is requested, it will be held at the EPA facility complex in Research Triangle Park, N.C. at 10 a.m. Persons interested in attending the hearing or wishing to present oral testimony should notify Eloise Shepherd, Combustion Group (MD–C439–01), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5578 at least 2 days in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: Mr. William Maxwell, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, N.C., 27711; telephone number (919) 541–5430; fax number (919) 541–5450; electronic mail address: *maxwell.bill@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities that will potentially be affected by the proposed amendments are those that produce HCl and are major sources of hazardous air pollutants (HAP) as defined in section 112 of the Clean Air Act (CAA). The regulated categories and entities include:

Category	SIC [a]	NAICS [b]	Regulated entities
Industry	2819 2821 2869	325188 325211 325199	Hydrochloric Acid Production.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in section 63.8985 of the HCl Production NESHAP. 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.

Submitting CBI. Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer, Mailcode C404–02, U.S. EPA, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2002–0057. 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.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

World Wide Web (WWW). The text of today's document will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Outline. The information presented in this preamble is organized as follows:

I. Background

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Hydrochloric acid production and fume silica production were listed as source categories under the production of inorganic chemicals group on EPA's initial list of major source categories (57 FR 31576, July 16, 1992). We later combined these two source categories for regulatory purposes and renamed the combined source category ''HCl Production'' (66 FR 48174, September

18, 2001). The next revision to the source category list will reflect this change. Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP. The CAA requires the national emission standards for HAP to reflect the maximum degree of reduction in HAP emissions that is achievable. This level of control is commonly known as the maximum achievable control technology (MACT).

On April 17, 2003, EPA published final standards (68 FR 19076) for the control of HAP from HCl production (40 CFR part 63, subpart NNNNN). The final rule contains emission limitations and standards applicable to HCl and chlorine (Cl_2). These limits apply to each new or existing HCl process vent, HCl storage tank, HCl transfer operation, and leaks from equipment in HCl service located at a major source of HAP.

After promulgation, some applicability- and compliance-related issues, in addition to several inadvertent omissions and typographical errors, were identified. We are proposing today's amendments to address these issues.

II. Summary of Proposed Amendments

We are proposing to amend 40 CFR part 63, subpart NNNNN, to change the applicability provisions, to clarify testing, monitoring, and reporting requirements, and to correct inadvertent omissions and typographical errors. A summary of each of the proposed amendments to 40 CFR part 63, subpart NNNNN, and the rationale for each is presented below.

A. Applicability

In order to avoid regulatory overlap, the HCl Production NESHAP exempts certain HCl production facilities that are part of other source categories and subject to other Federal standards. We intended the HCl Production NESHAP to cover only those HCl production facilities that were not subject to any other MACT standards and not to cover those HCl production facilities that were subject to other MACT standards. Today's proposed amendments would change the applicability provisions to rectify three situations that came to our attention after promulgation of the HCl Production NESHAP in which this intent was not satisfied.

First, the proposed amendments would address the HCl Production NESHAP's exemptions for HCl production facilities that are subject to certain other regulations, including 40 CFR part 63, subpart EEE (the Hazardous Waste Combustors NESHAP), and 40 CFR 266.107, subpart H (regulations issued under the Resource Conservation and Recovery Act governing the Burning of Hazardous Wastes in Boilers and Industrial Furnaces).[1] As currently worded, the exemptions are overly broad, because neither of the final rules covers emissions of HCl from HCl storage tanks, HCl transfer operations, or leaks from equipment in HCl service at these facilities. This leaves these emission points not subject to any Federal standards, which was not our intent. Therefore, we are proposing to amend subpart NNNNN of 40 CFR part 63 to exempt facilities that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the applicability requirements of subpart NNNNN from only the HCl process vent provisions of subpart NNNNN, rather than from all of the requirements of subpart NNNNN. Because the purpose of 40 CFR 63.8985(b) and (c) is to provide exemptions from all of the requirements of subpart NNNNN for entire HCl production facilities subject to certain other rules, we are proposing to remove 40 CFR 63.8985(b)(4) and (c)(3) to eliminate the overly broad exemptions and instead to add new paragraphs to 40 CFR 63.9000(c) to accomplish the proposed amendments. The purpose of 40 CFR 63.9000(c) is to exempt certain emission streams from subpart NNNNN. Under proposed 40 CFR 63.9000(c), plants that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the other applicability provisions of subpart NNNNN would be affected sources under subpart NNNNN but would be exempt from the process vents provisions of subpart NNNNN.

Second, the proposed amendments would revise the HCl Production NESHAP's exemptions for specific emission streams to eliminate duplicative regulation. Some emission points that are not themselves subject to subpart EEE of 40 CFR part 63 have their emissions controlled under subpart EEE because their emissions are routed directly through equipment that is subject to subpart EEE (e.g., an HCl process vent emission stream routed to a hazardous waste combustor for use as supplemental combustion air). Currently, these emissions (e.g., from the combustor) are regulated by both subpart EEE and subpart NNNNN of 40 CFR part 63. To rectify this situation, we are proposing to add a new paragraph to 40 CFR 63.9000(c) to include an emission stream-specific exemption for HCl process vents, HCl storage tanks, and HCl transfer operations that are routed directly to hazardous waste combustors subject to subpart EEE. This means that under the proposal, HCl production facility emission streams that are routed to subpart EEE hazardous waste combustors would be exempt from the requirements of subpart NNNNN.

Finally, the proposed amendments would remove the HCl Production NESHAP's exemption for HCl production facilities subject to 40 CFR 264.343(b), subpart O (Incinerators), which will no longer be necessary. A combustor that burns hazardous waste and meets the subpart NNNNN of 40 CFR part 63 definition of an HCl production facility would be defined as a halogen acid furnace (currently subject to 40 CFR 266.107, subpart H, and that would be subject to 40 CFR part 63, subpart EEE, under EPA's proposal at 69 FR 21198), not an incinerator (subject to 40 CFR 264.343(b), subpart O). As discussed above, we are proposing to amend the applicability provisions of the HCl Production NESHAP to properly address HCl production facilities that are subject to subpart H. Therefore, the exemption for subpart O will no longer be necessary, and we are proposing to remove 40 CFR 63.8985(c)(2), which provided this exemption. Consequently, we are proposing to incorporate the exemption provided in 40 CFR 63.8985(c)(1) into 40 CFR 63.8985(c), thus removing 40 CFR 63.8985(c)(1).

B. Definitions

We are proposing to clarify the meaning of ''equipment in HCl service,'' which is defined in the HCl Production NESHAP as ''each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time'' (see 40 CFR 63.9075). This definition could be interpreted to include equipment that is located at the same plant site as an ''HCl production facility'' (see 40 CFR 63.8985(a)(1)) but is not part of the HCl production facility. We intended to include only equipment that meets the above definition and is located within an HCl production facility. Therefore, we are

[1] Proposed amendments to subpart EEE, 40 CFR part 63 (69 FR 21198, March 31, 2004), include standards for HCl production furnaces that burn hazardous waste and propose to subject hazardous waste combustors that are HCl production facilities under 40 CFR part 266, subpart H, to NESHAP under 40 CFR part 63, subpart EEE. Promulgation of the standards is forthcoming.

proposing to amend the definition of ''equipment in HCl service'' in 40 CFR 63.9075 to clarify that the definition applies only to equipment within an HCl production facility.

C. Emission Standards

The HCl Production NESHAP specifies the emission limits for existing and new HCl process vents, HCl storage tanks, and HCl transfer operations in two forms—a percent reduction and an outlet concentration—and allows HCl production facilities to comply with either one. However, the wording of the emission limits could be construed to require the use of an add-on control device even when an emission point meets the outlet concentration emission limit without an add-on control device. It was not our intent to require add-on control devices when they are unnecessary for compliance. While a percent reduction emission limit would need to be achieved through the use of an add-on control device, we recognize that an outlet concentration emission limit could be achieved through other means (e.g., process changes, pollution prevention). Therefore, we are proposing to amend table 1 to subpart NNNNN of 40 CFR part 63 to clarify that it is not necessary to use an add-on control device in order to meet the outlet concentration form of the emission limits. In addition, we are proposing to amend tables 3 and 5 to subpart NNNNN to specify the sampling port location and continuous compliance requirements, respectively, for sources that are not equipped with an add-on control device. Also, we are proposing to amend 40 CFR 63.9015(a) to require that emission points meeting the outlet concentration limits without the use of a control device conduct subsequent performance tests when process changes are made that could reasonably be expected to change the outlet concentration. Finally, we are proposing to amend 40 CFR 63.9050 by adding paragraph (c)(9), which specifies that compliance reports must include verification that no process changes that could reasonably be expected to change the outlet concentration have been made since the last performance test.

D. Storage Tank Maintenance

The HCl Production NESHAP is silent on the issue of how maintenance is to be conducted on HCl storage tank control devices. This could lead to uncertainty over whether an HCl storage tank would need to be emptied before the associated control device could be disconnected for maintenance purposes. It was not our intent that an HCl storage tank would need to be emptied prior to maintenance because the standing losses associated with a full or partially-full HCl storage tank are low, when compared to the emissions that occur from filling and emptying the tank. To clarify our intent, we are proposing to amend 40 CFR 63.9000, by adding paragraph (d), to allow HCl production facilities to perform planned routine maintenance on each HCl storage tank control device for up to 240 hours per year without emptying the contents of the tank. During this time, the storage tank emission limitations would not apply. Also, we are proposing to amend 40 CFR 63.9050, by adding paragraph (c)(10), and 40 CFR 63.9055, by adding paragraph (b)(6), to specify the reporting and recordkeeping requirements for planned routine maintenance events. These provisions are consistent with other NESHAP to which plant sites containing HCl production facilities may be subject.

E. Notification and Reporting Requirements

1. Notification of Compliance Status

The HCl Production NESHAP requires the submission of a Notification of Compliance Status (NOCS) to the Administrator when a performance test is conducted (see 40 CFR 63.9045(a), table 7 to subpart NNNNN of 40 CFR part 63, and 40 CFR 63.9(h)). It could be interpreted that 40 CFR 63.9045(e) and (f) require the submission of a separate NOCS for each performance test that is conducted (e.g., on each emission point). It is more efficient and no less effective for HCl production facilities to submit one NOCS for the entire affected source, rather than one NOCS for each emission point tested, and it was not our intent to require unnecessary paperwork. Therefore, we are proposing to amend 40 CFR 63.9045 to change the submission procedures for NOCS. We are proposing to allow NOCS to be submitted within 240 calendar days of the compliance dates for subpart NNNNN of 40 CFR part 63. The amendment would allow for the submission of only one NOCS per affected source because the notification is due 60 days after all performance tests are required to be conducted. We are also proposing to amend table 7 to subpart NNNNN to reflect this change to the NOCS submission procedures.

2. Monitoring and Leak Detection and Repair (LDAR) Plans

The HCl Production NESHAP requires submission of the initial site-specific monitoring (40 CFR 63.9005(d)) and LDAR (LDAR; table 1 to subpart NNNNN of 40 CFR part 63) plans to the Administrator with a source's NOCS. The final rule does not, however, specify when or how revisions to these plans should be submitted, only that they should be submitted (40 CFR 63.9055(b)(5)). Submission of revisions to these plans is most efficiently done in conjunction with the semi-annual compliance report required by 40 CFR 63.9050. Therefore, we are proposing to amend 40 CFR 63.9050(c) by adding paragraph (c)(8) to require submission of revisions to site-specific monitoring plans and LDAR plans with semi-annual compliance reports, if revisions have been made during the reporting period.

F. Omissions and Typographical Corrections

We are proposing to add an exemption which was inadvertently omitted from the HC1 Production NESHAP. In the preamble to the final rule (68 FR 19082), we indicated that we would include an exemption for HC1 production facilities subject to 40 CFR 63.994, subpart SS. Because this exemption was not included in the final rule text, we are proposing to amend the rule to include it. Because we are proposing to remove 40 CFR 63.8985(b)(4), we are proposing to replace it with the exemption for 40 CFR 63.994, subpart SS.

We are proposing to remove the phrase ''/Cl_2'' from 40 CFR 63.8990(b)(4) to reflect a change made between the proposed rule and the final rule which was retained incorrectly in the final rule. The proposed rule used the term ''in HCl/Cl_2 service,'' but we wrote this term as ''equipment in HCl service'' in the final rule. We are proposing to make the same change in the first column of table 1, item 4 of subpart NNNNN of 40 CFR part 63.

We are proposing to correct an inaccurate reference in 40 CFR 63.9025(a) regarding operating parameters. The reference should be to 40 CFR 63.9020(e), which requires operating parameters to be established, rather than to 40 CFR 63.9020(d). This was a typographical error in the final rule.

We are proposing to correct an inaccurate reference in the definition of ''HCl production facility'' in 40 CFR 63.9075. The reference to 40 CFR 63.8985(a)(i) should be to 40 CFR 63.8985(a)(1) because 40 CFR

63.8985(a)(i) does not exist. This was a typographical error in the final rule.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the EO. The EO defines a ''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 entitlement, 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.

Pursuant to the terms of EO 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the EO. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements in the 2003 NESHAP for HCl production under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0529. EPA has prepared a revision to the currently approved information collection request (ICR), and you may obtain a copy of the currently approved ICR and the revised ICR from Susan Auby by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1672. Copies may also be downloaded off the internet at *http://www.epa.gov/icr.* Most of the proposed amendments are not expected to have an impact on the ICR burden. However, the ICR has been revised because two of today's proposed rule amendments are expected to change the burden slightly. The proposed exemption for individual emission streams that are routed to 40 CFR part 63, subpart EEE, hazardous waste combustors is expected to decrease the reporting and recordkeeping burden for some sources. The planned routine maintenance allowance is expected to increase the reporting and recordkeeping burden for all sources. Overall, the total annual reporting and recordkeeping burden is expected to be 733 hours (1 percent) lower than for the final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as a small business according to Small Business Administration (SBA) size standards by the North American Industry Classification System (NAICS) category of the owning parent entity. The small business size standard for the affected industries (NAICS 325181, Alkalies and Chlorine Manufacturing, and NAICS 325188, All Other Basic Inorganic Chemical Manufacturing) is a maximum of 1,000 employees for an entity.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. In accordance with the RFA, as amended by the SBREFA, 5 U.S.C. 601, *et seq.*, we conducted an assessment of the final rule on small businesses within the industries affected by the final rule. This analysis allowed us to certify that there would not be a significant impact on a substantial number of small entities from the implementation of the final rule. There is nothing contained in the proposed amendments that will impact small businesses in any way not considered in the analysis of the final rule; this means that the proposed amendments have no incremental impact on small businesses beyond what was already examined in the final rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's proposed amendments contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or Tribal governments. EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's proposed amendments are not subject to the

requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 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 proposed amendments do not have federalism implications. They 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. None of the affected facilities are owned or operated by State governments. Thus, EO 13132 does not apply to the proposed amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' The proposed amendments will not have Tribal implications, as specified in EO 13175. They 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. No Tribal governments own facilities subject to the HC1 Production NESHAP. Thus, EO 13175 does not apply to these proposed amendments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 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, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets EO 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. The proposed amendments are not subject to EO 13045 because they are based on technology performance and not on health or safety risks. Nor are the proposed amendments ''economically significant'' under EO 12866, as discussed in section III(A) of this preamble.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Today's action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, or business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The proposed amendments do not involve changes to the technical standards in the final rule. Therefore, EPA is not considering the use of any voluntary consensus standards in the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: August 17, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart NNNNN—[Amended]

2. Section 63.8985 is amended by revising paragraphs (b)(4) and (c) to read as follows:

§ 63.8985 Am I subject to this subpart?

* * * * *

(b) * * *

(4) 40 CFR part 63, § 63.994, subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

* * * * *

(c) An HCl production facility is not subject to this subpart if it is located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes, and the emissions from the HCl production facility are subject to § 63.113(c), subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

* * * * *

3. Section 63.8990 is amended by revising paragraph (b)(4) to read as follows:

§ 63.8990 What parts of my plant does this subpart cover?

* * * * *

(b) * * *

(4) Each emission stream resulting from leaks from equipment in HCl service.

* * * * *

4. Section 63.9000 is amended by:

a. Revising paragraph (a);

b. Revising the introductory text of paragraph (c);

c. Adding paragraphs (c)(4) through (c)(6); and

d. Adding paragraph (d).

§ 63.9000 What emission limitations and work practice standards must I meet?

(a) With the exceptions noted in paragraphs (c) and (d) of this section, you must meet the applicable emission limit and work practice standard in

table 1 to this subpart for each emission stream listed under § 63.8990(b)(1) through (4) that is part of your affected source.

* * * * *

(c) The emission streams listed in paragraphs (c)(1) through (6) of this section are exempt from the emission limitations, work practice standards, and all other requirements of this subpart.

* * * * *

(4) Emission streams from HCl process vents that are also subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.

(5) Emission streams from HCl process vents, HCl storage tanks, and HCl transfer operations that are routed directly to hazardous waste incinerators that are subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.

(6) Emission streams from HCl process vents that are located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes and that are also subject to § 266.107, subpart H, Burning of Hazardous Waste in Boilers and Industrial Furnaces.

(d) The emission limits for HCl storage tanks in table 1 to this subpart do not apply during periods of planned routine maintenance of HCl storage tank control devices. Periods of planned routine maintenance of each HCl storage tank control device, during which the control device does not meet the emission limits specified in table 1 to this subpart, shall not exceed 240 hours per year.

5. Section 63.9015 is amended by revising paragraph (a) to read as follows:

§ 63.9015 When must I conduct subsequent performance tests?

(a) You must conduct all applicable performance tests according to the procedures in § 63.9020 on the earlier of your title V operating permit renewal or within 5 years of issuance of your title V permit. For emission points meeting the outlet concentration limits in table 1 to this subpart without the use of a control device, all applicable performance tests must also be conducted whenever process changes are made that could reasonably be expected to change the outlet concentration. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: process upsets and unintentional, temporary process changes.

* * * * *

6. Section 63.9025 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.9020(e) to monitor, you must install, operate, and maintain each CMS according to the requirements in paragraphs (a)(1) through (6) of this section.

* * * * *

7. Section 63.9045 is amended by:

a. Removing and reserving paragraph (e); and

b. Revising paragraph (f).

§ 63.9045 What notifications must I submit and when?

* * * * *

(f) You must submit the Notification of Compliance Status, including the performance test results, within 240 calendar days after the applicable compliance dates specified in § 63.8995.

* * * * *

8. Section 63.9050 is amended by:

a. Revising the introductory text of paragraph (c); and

b. Adding paragraphs (c)(8) through (c)(10).

§ 63.9050 What reports must I submit and when?

* * * * *

(c) The compliance report must contain the following information in paragraphs (c)(1) through (10) of this section.

* * * * *

(8) If you did not make revisions to your site-specific monitoring plan and/or LDAR plant during the reporting period, a statement that you did not make any revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period. If you made revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a copy of the revised plan.

(9) If you meet the outlet concentration limit in table 1 to this subpart without the use of a control device for any emission point, verification that you have not made any process changes that could reasonably be expected to change the outlet concentration since your most recent performance test for that emission point.

(10) The information specified in paragraphs (c)(10)(i) and (ii) of this section for those planned routine maintenance operations that caused or may cause an HCl storage tank control device not to meet the emission limits in table 1 to this subpart, as applicable.

(i) A description of the planned routine maintenance that was performed for each HCl storage tank control device during the reporting period. This description shall include the type of maintenance performed and the total number of hours during the reporting period that the HCl storage tank control device did not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance.

(ii) A description of the planned routine maintenance that is anticipated to be performed for each HCl storage tank control device during the next reporting period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

* * * * *

9. Section 63.9055 is amended by adding paragraph (b)(6) to read as follows:

§ 63.9055 What records must I keep?

* * * * *

(b) * * *

(6) Records of the planned routine maintenance performed on each HCl storage tank control device including the duration of each time the control device does not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(6)(i) and (ii) of this section.

(i) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were not met at the beginning of the planned routine maintenance, and

(ii) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were met at the conclusion of the planned routine maintenance.

10. Section 63.9075 is amended by revising the definitions of ''Equipment in HCl service'' and ''HCl production facility'' to read as follows:

§ 63.9075 What definitions apply to this subpart?

* * * * *

Equipment in HCl service means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in an HCl production facility that contains 30 weight percent or greater of

liquid HCl or 5 weight percent or greater of gaseous HCl at any time.

* * * * *

HCl production facility is defined in § 63.8985(a)(1).

* * * * *

11. Table 1 in subpart NNNNN is revised to read as follows:

As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source:

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS

For each . . .	You must meet the following emission limit and work practice standard . . .
1. Emission stream from an HCl process vent at an existing source.	a. Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 20 ppm by volume or less; and b. Reduce Cl_2 emissions by 99 percent or greater or achieve an outlet concentration of 100 ppm by volume or less.
2. Emission stream from an HCl storage tank at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
3. Emission stream from an HCl transfer operation at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
4. Emission stream from leaking equipment in HCl service at existing and new sources.	a. Prepare and operate at all times according to an equipment LDAR plan that describes in detail the measures that will be put in place to detect leaks and repair them in a timely fashion; and b. Submit the plan to the Administrator for comment only with your Notification of Compliance Status; and c. You may incorporate by reference in such plan existing manuals that describe the measures in place to control leaking equipment emissions required as part of other federally enforceable requirements, provided that all manuals that are incorporated by reference are submitted to the Administrator.
5. Emission stream from an HCl process vent at a new source.	a. Reduce HCl emissions by 99.4 percent or greater or achieve an outlet concentration of 12 ppm by volume or less; and b. Reduce Cl_2 emissions by 99.8 percent or greater or achieve an outlet concentration of 20 ppm by volume or less.
6. Emission stream from an HCl storage tank at a new source.	Reduce HCl emissions by 99.9 percent or greater or achieve an outlet concentration of 12 ppm by volume or less.
7. Emission stream from an HCl transfer operation at a new source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.

12. Table 3 in subpart NNNNN is revised to read as follows:

As stated in § 63.9020, you must comply with the following requirements for performance tests for HCl production for each affected source:

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
1. Select sampling port location(s) and the number of traverse points.	a. Method 1 or 1A appendix A to 40 CFR part 60 of this chapter.	i. If complying with a percent reduction emission limitation, sampling sites must be located at the inlet and outlet of the control device prior to any releases to the atmosphere (or, if a series of control devices are used, at the inlet of the first control device and at the outlet of the final control device prior to any releases to the atmosphere); or ii. If complying with an outlet concentration emission limitation, the sampling site must be located at the outlet of the final control device and prior to any releases to the atmosphere or, if no control device is used, prior to any releases to the atmosphere.
2. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 of this chapter.	
3. Determine gas molecular weight	a. Not applicable	i. Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas.	Method 4 in appendix A to 40 CFR part 60 of this chapter.	
5. Measure HCl concentration and Cl2 concentration from HCl process vents.	a. Method 26A in Appendix A to 40 CFR part 60 of this chapter.	i. An owner or operator may be exempted from measuring the Cl2 concentration from an HCl process vent provided that a demonstration that Cl2 is not likely to be present in the stream is submitted as part of the site-specific test plan required by § 63.9020(a)(2). This demonstration may be based on process knowledge, engineering judgment, or previous test results.

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES—Continued

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
6. Establish operating limits with which you will demonstrate continuous compliance with the emission limits in Table 1 to this subpart, in accordance with § 63.9020(e)(1) or (2).		

13. Table 5 in subpart NNNNN is revised to read as follows:

As stated in § 63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source and each work practice standard:

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Affected source using a caustic scrubber or water scrubber/absorber.	a. In Tables 1 and 2 to this subpart.	i. Collecting the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, and effluent pH monitoring data according to § 63.9025, consistent with your monitoring plan; and ii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iii. Maintaining the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and iv. Maintaining the daily average scrubber effluent pH within the operating limits.
2. Affected source using any other control device.	a. In Tables 1 and 2 to this subpart.	i. Conducting monitoring according to your monitoring plan established under § 63.8(f) in accordance with § 63.9025(c); and ii. Collecting the parameter data according to your monitoring plan established under § 63.8(f); and iii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iv. Maintaining the daily average parameter values within the operating limits established according to your monitoring plan established under § 63.8(f).
3. Affected source using no control device.	a. In Tables 1 and 2 to this subpart.	i. Verifying that you have not made any process changes that could reasonably be expected to change the outlet concentration since your most recent performance test for an emission point.
4. Leaking equipment affected source.	a. In Table 1 to this subpart	i. Verifying that you continue to use a LDAR plan; and ii. Reporting any instances where you deviated from the plan and the corrective actions taken.

14. Table 7 in subpart NNNNN is revised to read as follows:

As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following:

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.9075.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements—applicability.	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved]	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources that become major.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)–(2)	Operation and maintenance requirements	Yes.	
§ 63.6(e)(3)	SSM plans	Yes.	
§ 63.6(f)(1)	Compliance except during SSM	Yes.	
§ 63.6(f)(2)–(3)	Methods for determining compliance	Yes.	
§ 63.6(g)	Use of an alternative non-opacity emission standard	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.6(i)	Extension of compliance with emission standards	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Except for existing affected sources as specified in § 63.9010(b).
§ 63.7(a)(3)	Administrator's Clean Air Act section 114 authority to require a performance test.	Yes.	
§ 63.7(b)	Notification of performance test and rescheduling	Yes.	
§ 63.7(c)	Quality assurance program and site-specific test plans	Yes.	
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests	Yes.	
§ 63.7(f)	Use of an alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping and reporting	Yes.	
§ 63.7(h)	Waiver of performance tests	Yes.	
§ 63.8(a)(1)–(3)	Applicability of monitoring requirements	Yes	Additional monitoring requirements are found in § 63.9005(d) and 63.9035.
§ 63.8(a)(4)	Monitoring with flares	No	Subpart NNNNN does not refer directly or indirectly to § 63.11.
§ 63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3)	Continuous monitoring system O&M	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart NNNNN does not have opacity or visible emission standards.
§ 63.8(c)(6)	Zero and high level calibration checks	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(7)–(8)	Out-of-control periods, including reporting	Yes.	
§ 63.8(d)–(e)	Quality control program and CMS performance evaluation	No	Applies as modified by § 63.9005(d).
§ 63.8(f)(1)–(5)	Use of an alternative monitoring method	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g)	Data reduction	Yes	Applies as modified by § 63.9005(d).
§ 63.9(a)	Notification requirements—applicability	Yes.	
§ 63.9(b)	Initial notifications	Yes	Except § 63.9045(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1) (iii) in lieu of the initial notification.

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emissions/opacity test	No	Subpart NNNNN does not have opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§ 63.9(g)(2)	Use of COMS data	No	Subpart NNNNN does not require the use of COMS.
§ 63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§ 63.9(h)	Notification of compliance status	Yes	Except the submission date specified in § 63.9(h)(2)(ii) is superseded by the date specified in § 63.9045(f).
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Recordkeeping/reporting applicability	Yes.	
§ 63.10(b)(1)	General recordkeeping requirements	Yes	§§ 63.9055 and 63.9060 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi)	Records related to SSM periods and CMS	Yes.	
§ 63.10(b)(2)(xii)	Records when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test	No	Applies only to sources with CEMS.
§ 63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes.	
§ 63.10(b)(3)	Recordkeeping requirements for applicability determinations	Yes.	
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS	Yes	Applies as modified by § 63.9005(d).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.9050 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes	§ 63.9045(f) specifies submission date.
§ 63.10(d)(3)	Opacity or visible emissions observations	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions	Yes.	
§ 63.10(d)(5)	SSM reports	Yes.	
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(ii)	Results of COMS performance evaluations	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports	Yes.	
§ 63.10(e)(4)	Continuous opacity monitoring system data reports	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes.	
§ 63.11	Control device requirements—applicability	No	Facilities subject to subpart NNNNN do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.9070 lists those sections of subparts NNNNN and A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes	Subpart NNNNN does not incorporate any material by reference.
§ 63.15	Availability of information/confidentiality	Yes.	

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AU04; 1018–AU 09; 1018–AU13; 1018–AU28

Migratory Bird Hunting; Approval of Tungsten-Iron-Copper-Nickel, Iron-Tungsten-Nickel Alloy, and Tungsten-Bronze (Additional Formulation), and Tungsten-Tin-Iron Shot Types as Nontoxic for Hunting Waterfowl and Coots; Availability of Environmental Assessments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (we, us, or USFWS) proposes to approve four shot types or alloys for hunting waterfowl and coots and to change the listing of approved nontoxic shot types in 50 CFR 20.21(j) to reflect the cumulative approvals of nontoxic shot types and alloys.

These four shot types or alloys were submitted to us separately, and we published advance notices of proposed rulemakings for these shot types under RINs 1018–AU04, 1018–AU09, 1018–AU13, and 1018–AU28, respectively. We now combine all these actions under RIN 1018–AU04.

In addition, we propose to approve alloys of several metals because we have approved the metals individually at or near 100% in nontoxic shot.

DATES: Send comments on this proposal by September 23, 2005.

ADDRESSES: You may submit comments, identified by RIN 1018–AU04, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://migratorybirds.fws.gov*. Follow the links to submit a comment.
- E-mail address for comments: *George_T_Allen@fws.gov*. Include ''RIN 1018–AU04'' in the subject line of the message. Please submit electronic comments as text files; do not use file compression or any special formatting.
- Fax: 703–358–2217.
- Mail: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203–1610.
- Hand Delivery: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

For specific instructions on submitting or inspecting public comments, inspecting the complete file for this rule, or requesting a copy of the draft environmental assessment, see Public Comments in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, 703–358–1714.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–711) and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) implement migratory bird treaties between the United States and Great Britain for Canada (1916, amended), Mexico (1936, amended), Japan (1972, amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Acts. The Acts authorize the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the U.S. Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify shot types that do not pose significant toxicity hazards to migratory birds or other wildlife. We addressed the issue of lead poisoning in waterfowl in an Environmental Impact Statement in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other potential candidates for approval as nontoxic shot. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

We have received applications for approval of four shot types as nontoxic for hunting waterfowl and coots. Those shot types are:

1. Tungsten-Iron-Copper-Nickel (TICN) shot, of 40–76 percent tungsten, 10–37 percent iron, 9–16 percent copper, and 5–7 percent nickel (70 FR 3180, January 21, 2005);

2. Iron-Tungsten-Nickel (ITN) alloys composed of 20–70 percent tungsten, 10–40 percent nickel, and 10–70 percent iron (70 FR 22625, May 2, 2005);

3. Tungsten-Bronze (TB) shot made of 60 percent tungsten, 35.1 percent copper, 3.9 percent tin, and 1 percent iron (70 FR 22624, May 2, 2005, Note: This formulation differs from the Tungsten-Bronze nontoxic shot formulation approved in 2004.); and

4. Tungsten-Tin-Iron (TTI) shot composed of 58 percent tungsten, 38 percent tin, and 4 percent iron.

The metals in these shot types have already been approved in other nontoxic shot types. In considering approval of these shot types, we were particularly concerned about the solubility and bioavailability of the nickel and copper in them. In addition, because tungsten, tin, and iron have already been approved at very high proportions of other nontoxic shot types with no known negative effects of the metals, we will propose approval of all alloys of these four metals.

The data provided to us indicate that the shot types are nontoxic when ingested by waterfowl and should not pose a significant danger to migratory birds, other wildlife, or their habitats. We conclude that they raise no particular concerns about deposition in the environment or about ingestion by waterfowl or predators.

The process for submission and evaluation of new shot types for approval as nontoxic is given at 50 CFR 20.134. The list of shot types approved as nontoxic for use in hunting migratory birds is provided in the table at 50 CFR 20.21(j). With this proposed rule, we also propose to revise the listing of approved nontoxic shot types in § 20.21(j) to include the cumulative approvals of the shot types considered in this proposed rule with the other nontoxic shot types already in the table.

Many hunters believe that some nontoxic shot types do not compare favorably to lead and that they may damage some shotgun barrels, and a small percentage of hunters have not complied with nontoxic shot regulations. Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. The use of nontoxic shot for waterfowl hunting has increased in recent years (Anderson *et al.* 2000), but we believe that compliance will continue to increase with the availability and approval of other

nontoxic shot types. Increased use of nontoxic shot will enhance protection of migratory waterfowl and their habitats. More important, however, is that the Fish and Wildlife Service is obligated to consider all complete nontoxic shot submissions.

We also propose to add a column to the table of approved shot types that lists the field testing device suitable for each shot type. The information in this column is strictly informational, not regulatory. Because these regulations are used by both waterfowl hunters and law enforcement officers, we believe that information on suitable testing devices is a useful addition to the table.

Affected Environment

Waterfowl Populations

The taxonomic family Anatidae, principally subfamily Anatinae (ducks) and their habitats, comprise the affected environment. Waterfowl habitats and populations in North America in 2004 were described by the U.S. Fish and Wildlife Service (Garrettson *et al.* 2004). In the Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total-duck population estimate was 32.2 ± 0.6 (± 1 standard error) million birds, 11 percent below the 2003 estimate of 36.2 ± 0.7 million birds, and 3 percent below the 1955–2003 long-term average. Mallards (*Anas platyrhynchos*) were estimated at 7.4 ± 0.3 million, similar to last year's estimate of 7.9 ± 0.3 million birds and to the long-term average. Blue-winged teal (*A. discors*) numbered 4.1 ± 0.2 million, 26 percent below last year's estimate of 5.5 ± 0.3 million and 10 percent below the long-term average. Among other duck species, only northern shovelers (*A. clypeata*, 2.8 ± 0.2 million) and American wigeon (*A. americana*, 2.0 ± 0.1 million) were both 22 percent below their 2003 estimates. As in 2003, gadwall (*A. strepera*, 2.6 ± 0.2 million, +56 percent), green-winged teal (*A. crecca*, 2.5 ± 0.1 million, +33 percent), and northern shovelers (+32 percent) were above their long-term averages. Northern pintails (*A. acuta*, 2.2 ± 0.2 million, ·48 percent), scaup (*Aythya affinis* and *A. marila*, 3.8 ± 0.2 million, ·27 percent), and American wigeon (·25 percent) were well below their long-term averages in 2004.

Habitats

Waterfowl hunting occurs in habitats used by many taxa of migratory birds, as well as by aquatic invertebrates, amphibians and some mammals. Fish also may be found in many hunting locations. In 2004, total May ponds in Prairie Canada, and the north-central United States combined were estimated at 3.9 ± 0.2 million, which was 24 percent lower than the figure for 2003 and 19 percent below the long-term average. Pond numbers in both Canada (2.5 ± 0.1 million) and the U. S. (1.4 ± 0.1 million) were below 2003 estimates (·29 percent in Canada, and ·16 percent in the United States), and pond numbers in Canada were 25 percent below the long-term average for the region.

Fall Flight Forecasts

The projected mallard fall flight index was 9.4 ± 0.1 million birds, similar to the 2003 estimate of 10.3 ± 0.1 million. The 2004 total duck population estimate for the eastern survey area (strata 51–56 and 62–69) was 3.9 ± 0.3 million birds. This estimate was similar to the 2003 estimate of 3.6 ± 0.3 million birds, and to the 1996–2003 average. Individual species estimates for this area were similar to 2003 estimates and to 1996–2003 averages, with the exception of American wigeon (0.1 ± 0.1 million) and goldeneyes (*Bucephala clangula* and *B. islandica*, 0.4 ± 0.1 million), which were 61 percent and 42 percent below their 1996–2003 averages, respectively, and ring-necked ducks (*Aythya collaris*, 0.7 ± 0.2 million), which increased by 67 percent relative to the 2003 estimate of their numbers.

Characterization of the Four Shot Types

TICN Alloys

Spherical Precision, Inc. of Tustin, CA, submitted Tungsten-Iron-Copper-Nickel (TICN) shot for approval. The advance notice of proposed rulemaking for this group of alloys was published in the **Federal Register** on January 21, 2005, under RIN 1018–AU04 (70 FR 3180). This is an array of layered alloys or metals of 40–76 percent tungsten, 10–37 percent iron, 9–16 percent copper, and 5–7 percent nickel. TICN shot has a density ranging from 10.0 to 14.0 grams per cubic centimeter (g/cm^3), is noncorrosive, and is magnetic. Spherical Precision estimates that the volume of TICN shot for use in hunting migratory birds in the United States will be approximately 50,000 pounds (lb) (22,700 kilograms (kg)) during the first year of sale, and perhaps 100,000 lb (45,400 kg) per year thereafter.

ITN Alloys

ENVIRON-Metal of Sweet Home, OR, submitted Iron-Tungsten-Nickel (ITN) alloys, which are cast alloys containing 10–70 percent iron, 20–70 percent tungsten, and 10–40 percent nickel. The advance notice of proposed rulemaking for this group of alloys published in the **Federal Register** on May 2, 2005, under RIN 1018–AU09 (70 FR 22625). The proposed shot types have densities ranging from about 8.5 to about 13.5 g/cm^3. The compositions of the alloys are shown in table 1.

TABLE 1.—COMPOSITION OF ITN SHOT ALLOYS

Alloy	Density (g/cm^3) [1]	Shot weight (mg) [2]	Iron		Tungsten		Nickel	
			Percent	Weight (mg)	Percent	Weight (mg)	Percent	Weight (mg)
1	8.8	165.89	70	116.12	20	33.18	10	16.59
2	9.0	169.65	40	67.86	20	67.86	40	33.93
3	9.8	184.73	44	81.28	33	60.96	23	42.49
4	11.3	213.00	10	21.30	50	106.50	40	85.20
5	13.3	250.71	20	50.14	70	175.49	10	25.07
6	13.55	255.42	10	25.54	70	178.79	20	51.08

Note.—Weights are based on one number 4 shot.

ENVIRON-Metal estimated that the yearly volume of ITN shot types with densities between those of steel (7.86 g/cm^3) and lead (11.3 g/cm^3) expected for use in hunting migratory birds in the United States is approximately 200,000 lb (113,500 kg) during the first year of sale. In the second year and beyond, sales upwards of 500,000 lb (227,000 kg) per year are anticipated. ITN shot types with densities greater than that of lead may ultimately attain sales levels of 1,000,000 lb (454,000 kg) per year.

TB Shot

The Olin Corporation of East Alton, IL, submitted Tungsten-Bronze (TB) shot for approval. The advance notice of proposed rulemaking for this shot type was published in the **Federal Register** on May 2, 2005, under RIN 1018–AU13 (70 FR 22624). This is a sintered composite with an average composition of 60 percent tungsten, 35.1 percent copper, 3.9 percent tin, and 1 percent iron. The copper and tin make up 39 percent of the shot as a 90:10 ratio, respectively, in the form of a bronze alloy. The shot has a density of 12.0 g/cm^3, compared to 11.1–11.3 g/cm^3 for lead, and 7.9 g/cm^3 for steel. Olin estimated that the yearly volume of the TB shot in hunting migratory birds in North America will be approximately 300,000 lb (136,200 kg).

TTI Shot

Tungsten-Tin-Iron (TTI) shot, submitted by Nice Shot, Inc., of Albion, PA, is a cast alloy composed of 58 percent tungsten, 38 percent tin, and 4 percent iron. This shot type has a density of 11.0 g/cm^3. Nice Shot, Inc. estimated that approximately 5,000 lb (2,270 kg) of TTI shot are expected to be sold for use in hunting migratory birds in the United States during the first year of sale. TTI shot contains less than 1 percent lead, and will not be coated.

Each of the four shot types has a residual lead level of less than 1 percent. To inhibit corrosion, TICN shot may be coated with tin, and ITN shot may be surface-coated with thin petroleum-based films. Neither TB nor TTI shot will be coated.

Environmental Fate of the Metals in the Four Shot Types

All of the metals in these shot types have been approved in other nontoxic shot types, and the submitters asserted that the four shot types pose no adverse toxicological risks to waterfowl or other forms of terrestrial or aquatic life. Our particular concern in considering approval of these shot types is the solubility and bioavailability of the nickel and copper in them.

The metals in the four shot types are insoluble under hot and cold (Weast 1986). Neither manufacturing the shot nor firing shotshells containing the shot will alter the metals or change how they dissolve in the environment. The shot types are not chemically or physically altered by firing from a shotgun.

Iron is naturally widespread. It comprises approximately 2 percent of the composition of soils and sediments in the United States. The iron in the shot types is not soluble.

Elemental tungsten and iron are virtually insoluble in water, and therefore do not weather and degrade in the environment. Tungsten is stable in acids and does not easily form compounds with other substances. Preferential uptake by plants in acidic soil suggests uptake of tungsten when it has formed compounds with other substances rather than when it is in its elemental form (Kabata-Pendias and Pendias 1984).

Elemental copper can be oxidized by organic and mineral acids that contain an oxidizing agent. Elemental copper is not oxidized in water (Aaseth and Norseth 1986).

Nickel is common in fresh waters, though usually at concentrations of less than 1 part per billion (p/b) in locations unaffected by human activities. Pure nickel is not soluble in water, and resists corrosion at temperatures between ·20 °C and 30 °C (Chau and Kulikovsky-Cordeiro 1995). Free nickel may be part of chemical reactions, such as sorption, precipitation, and complexation. ''Under anaerobic conditions, typical of deep groundwater, precipitation of nickel sulfide keeps nickel concentrations low'' (Eisler 1998). Reactions of nickel with anions are unlikely. Complexation with organic agents is poorly understood (U.S. Environmental Protection Agency [EPA] 1986). Water hardness is the dominant factor governing nickel effects on biota (Stokes 1988).

Tin is only very slightly soluble at pH values from 4 to 11, as found in natural settings. Tin occurs naturally in soils at 2 to 200 mg/g (parts per thousand or ppt) with areas of enrichment at concentrations up to 1,000 mg/g (WHO 1980). In general, however, soil concentrations in the United States are between 1 and 5 parts per million (p/m) (Kabata-Pendias and Pendias 1984).

Possible Environmental Concentrations for Metals in the Four Shot Types in Terrestrial Systems

Calculation of the estimated environmental concentration (EEC) of a candidate shot in a terrestrial ecosystem is based on 69,000 shot per hectare (50 CFR 20.134). These calculations assume that the shot dissolves promptly and completely after deposition.

TICN Alloys

The maximum EEC for TICN shot for tungsten in soil is 21.3 p/m. This is below the EEC for several other tungsten-based shot types that we have previously approved. We are not aware of any problems associated with those shot types. The U.S. EPA does not have a biosolids application limit for tungsten.

For TICN shot, if the shot are completely dissolved in dry, porous soil, the maximum EEC for iron is 7.40 p/m. Iron is naturally widespread, comprising approximately 2 percent of the composition of soils and sediments in the United States. The EEC for iron from TICN shot is much lower than that level.

For copper in TICN shot, the maximum EEC in soils is 3.36 p/m. In comparison, the ceiling concentration limit for biosolids application for copper is 4,300 p/m (EPA 2000).

The maximum EEC for nickel in TICN shot in soils is 1.62 p/m. This concentration is a small fraction of the EPA biosolids application limit of 420 p/m (EPA 2000).

If TICN shot is coated with tin, the EEC for tin in dry soils is 1.31 p/m. There is no EPA biosolids application limit for tin, but it occurs naturally in soils at 2 to 200 p/m, with areas of enrichment at concentrations up to 1,000 p/m (WHO 1980). In general, soil concentrations in the United States are between 1 and 5 p/m; the suggested maximum concentration in surface soil tolerated by plants is 50 p/m dry weight (Kabata-Pendias and Pendias 1984).

ITN Alloys

The terrestrial EECs for the iron and tungsten from any ITN alloy (table 2) are below those from approved shot types, and we do not believe they are a problem in soils. Though data on iron concentrations in biosolids are unavailable, natural soil background concentrations range from 5,000 to 50,000 p/m. This is equivalent to 32,500 to 325,000 kg per hectare (kg/h). We do not believe that the worst-case additional 8.01 kg of iron per hectare (about 0.025 percent of natural background concentrations) would have any effect on plants or animals, especially since the iron in the shot is not in a soluble form.

TABLE 2.—EXPECTED TERRESTRIAL ENVIRONMENTAL CONCENTRATIONS OF THE METALS IN ITN ALLOYS

Alloy (% I/T/N)	Shot weight (kg)	Deposition (kg)			Terrestrial EEC (p/m)		
		Iron	Tungsten	Nickel	Iron	Tungsten	Nickel
1 (70/20/10)	11.446	8.01	2.29	1.15	12.33	3.52	1.76
2 (40/20/40)	11.706	4.68	2.34	4.68	7.20	3.60	7.20
3 (44/33/23)	12.746	5.61	4.21	2.93	8.63	6.47	4.51
4 (10/50/40)	14.700	1.47	7.35	5.88	2.26	11.31	9.05
5 (20/70/10)	17.299	3.46	12.11	1.73	5.32	18.63	2.66
6 (10/70/20)	17.624	1.76	12.34	3.52	2.71	18.98	5.42

Data from biosolid studies indicate that tungsten generally is present at 40 to 180 p/m, about four times the worst EEC for tungsten from ITN shot. Therefore, it is unlikely that tungsten from the shot would exceed concentrations obtained from biosolid applications.

The estimated soil concentration (p/m soil) of nickel for ITN alloy 4 (the highest in nickel) is a very small fraction of the 420 p/m maximum concentration allowed for terrestrial application of biosolids and is two orders of magnitude less than the maximum cumulative loading rate for nickel of 420 kg/h per year (*http://www.epa.gov/cgi-bin/claritgw*). We do not believe that nickel from ITN shot would pose an environmental problem in soils.

TB Shot

Based on the maximum concentration of each metal in any formulation of TB shot, the increased concentrations in soils for the metals are 14.4 p/m for tungsten, 8.43 p/m for copper, 0.94 p/m for tin, and 0.24 p/m for iron. The EEC for tungsten is lower than the value for ITN shot, and considerably lower than the values for previously approved shot types. As noted earlier, the ceiling concentration limit for biosolids application for copper is 4,300 p/m (EPA 2000). The EEC for iron from TB shot is extremely small.

TTI Shot

The EEC for tungsten in TTI shot in soil (the increase in soil concentration) is 12.77 mg/kg or p/m. This is below the EEC for several other tungsten-based shot types that we have previously approved. We are not aware of any problems associated with those shot types. The EPA does not have a biosolids application limit for tungsten. Data from biosolid studies indicate that tungsten generally is present at 40 to 180 p/m, about four times the worst EEC for tungsten from ITN shot. Therefore, it is unlikely that tungsten from the shot would exceed concentrations obtained from biosolid applications.

The EEC for tin in dry soils is 8.37 p/m. In general, soil concentrations in the United States are between 1 and 5 p/m; the suggested maximum concentration in surface soil tolerated by plants is 50 p/m dry weight (Kabata-Pendias and Pendias 1984), about six times the worst-case concentration to be expected from TTI shot.

If the shot are completely dissolved in dry, porous soil, the maximum EEC for iron is 0.88 p/m. Iron is naturally widespread, comprising approximately 2 percent of the composition of soils and sediments in the United States. The EEC for iron from TTI shot is much lower than that level.

Though data on iron concentrations in biosolids are unavailable, natural soil background concentrations range from 5,000 to 50,000 p/m. This is equivalent to 32,500 to 325,000 kg per hectare. We do not believe that the extremely small addition of the insoluble iron from TTI shot would have any effect on plants or animals, especially because the iron in the shot is not in a soluble form.

Possible Environmental Concentrations for Metals in the Four Shot Types in Aquatic Systems

The EEC for water assumes that 69,000 number 4 shot are completely dissolved in 1 hectare of water 1 foot (ft) (30.48 cm) deep. The submitter then calculates the concentration of each metal in the shot if the shot pellets dissolve completely. For our analyses, we assume complete dissolution of the shot type containing the highest proportion of each metal in the range of alloys submitted.

TICN Alloys

For TICN shot, the EEC for tungsten is 4.541 milligrams per liter (mg/l). The EPA has set no acute or chronic criteria for tungsten in aquatic systems.

The EEC for iron from TICN shot in water is 1.579 mg/l. The chronic water quality criterion for iron in fresh water is 1 mg/l (EPA 1986). EPA has no criterion for salt water.

For copper, the aquatic EEC is 0.717 mg/l. This value is above both the acute and chronic criteria for freshwater and saltwater. This issue is discussed in the ''In Vitro Solubility Evaluation of TICN Shot'' section.

The aquatic EEC for nickel from TICN shot is 0.346 mg/l. The EPA (1986) acute criterion for nickel in fresh water is 1,400 micrograms per liter (µg/l); the chronic criterion is 160 µg/l. The acute and chronic criteria for salt water are 75 and 8.3 µg/l, respectively. Based on the EEC, the maximum release of nickel from TICN shot would be well below the fresh water acute criterion for protection of aquatic life.

For the tin in TICN shot, the aquatic EEC is 0.280 mg/l. The lowest published standard for tin in water is the 4 mg/l water quality standard for the state of Minnesota. Even in the worst case, the tin concentration from dissolved TICN shot would be well below this standard.

ITN Alloys

The aquatic EECs for the metals in ITN shot are shown in table 3. The EEC for nickel exceeds aquatic water quality criteria (table 4). However, corrosion studies demonstrated that corrosion rates for all types of ITN shot are relatively low in both fresh water and seawater. This corrosion is discussed under ''In Vitro Solubility Evaluation of ITN Shot.''

TABLE 3.—EXPECTED AQUATIC ENVIRONMENTAL CONCENTRATIONS OF THE METALS IN ITN ALLOYS

Alloy (% I/T/N)	Shot weight (kg)	Deposition (kg)			Aquatic EEC (p/m)		
		Iron	Tungsten	Nickel	Iron	Tungsten	Nickel
1 (70/20/10)	11.446	8.01	2.29	1.15	2,629	751	376
2 (40/20/40)	11.706	4.68	2.34	4.68	1,536	768	1,536
3 (44/33/23)	12.746	5.61	4.21	2.93	1,840	1,380	962
4 (10/50/40)	14.700	1.47	7.35	5.88	482	2,411	1,929
5 (20/70/10)	17.299	3.46	12.11	1.73	1,135	3,973	568
6 (10/70/20)	17.624	1.76	12.34	3.52	578	4,048	1,156

TABLE 4.—AQUATIC LIFE CRITERIA AND WORST-CASE CONCENTRATIONS OF METALS IN ITN SHOT

Metal	Acute water quality criterion for aquatic life (µg/l)	Chronic water quality criterion for aquatic life (µg/l)	Maximum EEC from ITN alloys
Iron	No Criterion	1,000	2,629 (Alloy 1).
Tungsten	No Criterion	No Criterion	4,048 (Alloy 6).
Nickel (fresh water)	1,400	160	1,929 (Alloy 4).
Nickel (salt water)	75	8.3	1,929 (Alloy 4).

TB Shot

The aquatic EECs for metals in TB shot are shown in table 5. The EEC for copper is considerably above the criteria for protection of fresh water and salt water life. However, a solubility study for this shot type demonstrated that corrosion of TB shot is low. This is discussed under ''In Vitro Solubility Evaluation of TB Shot.''

TABLE 5.—AQUATIC LIFE CRITERIA AND CONCENTRATIONS OF METALS IN TB SHOT

Metal	Acute water quality criterion for aquatic life (µg/l)	Chronic water quality criterion for aquatic life (µg/l)	Maximum EEC from TB shot
Tungsten	No Criterion	No Criterion	3,073
Copper (Fresh Water)	13.0	9.0	1,797
Copper (Salt Water)	4.8	3.1	1,797
Tin	4,0001 [1]	No Criterion	199.7
Iron	No Criterion	1,000	51.2

[1] Minnesota water quality standard, no federal standard for comparison.

TTI Shot

The EEC for tungsten is 2.72 milligrams per liter (mg/1). The EPA has set no acute or chronic criteria for tungsten in aquatic systems.

The aquatic EEC for tin is 1.78 mg/1. The lowest published standard for tin in water is the 4 mg/1 water quality standard for the state of Minnesota. Tin concentration from dissolved TTI shot would be well below this standard.

The EEC for iron from TTI shot in water is 0.19 mg/1. The chronic water quality criterion for iron in fresh water is 1 mg/1 (EPA 1986). EPA has no criterion for salt water.

In Vitro Solubility Evaluation of TICN Shot

When nontoxic shot is ingested by waterfowl, both physical breakup of the shot, and dissolution of the metals that comprise the shot, may occur in the highly acidic environment of the gizzard. In addition to the standard Tier 1 application information, Spherical Precision provided the results of an in vitro gizzard simulation test conducted to quantify the release of metals in solution under the prevailing pH conditions of the avian gizzard. The metal concentrations released during the simulation test were, in turn, compared to known levels of metals that cause toxicity in waterfowl. The evaluation followed the methodology of Kimball and Munir (1971) as closely as possible. The average amount of copper and nickel released from eight TICN shot per day are 1.87 mg and 1.77 mg, respectively.

The maximum tolerable level of dietary copper during the long-term growth of chickens (*Gallus domesticus*) and turkeys (*Meleagris* species) has been reported to be 300 p/b (Committee on Mineral Toxicity in Animals (CMTA) 1980). At the maximum tolerable level for chronic exposure of 300 ppb for poultry, a 1.8 kg chicken consuming 100 g of food per day (Morck and Austic 1981) would consume 30 mg copper per day (16.7 mg of copper per kg of body weight per day). The average amount of copper released from eight TICN shot is 1.87 mg per day, which is well below concentrations that cause copper toxicosis in waterfowl. A bird would have to ingest 129 TICN shot to exceed the maximum tolerable level.

No reproductive or other effects were observed in mallards that consumed the equivalent of 102 mg of nickel as nickel sulfate each day for 90 days (Eastin and O'Shea 1981). Therefore, the average amount of nickel released from eight TICN shot/day of 1.77 mg will pose no risk of adverse effects to waterfowl. Additionally, metallic nickel likely has a lower absorption from the gastrointestinal tract than does the nickel sulfate used in the mallard reproduction study, further decreasing the absorbed dose of TICN shot compared to the published toxicity study described above.

We concluded that TICN shot is very resistant to degradation, and that it poses no risk to waterfowl if ingested in the field. The slow breakdown rate of

1.53 mg per shot per day only permits the release of 0.233 mg of copper and 0.221 mg of nickel per shot per day, both of which are concentrations that are orders of magnitude below toxic levels of concern for copper and nickel in waterfowl.

In Vitro Solubility Evaluation of ITN Shot

Fresh water, seawater, and an ''artificial gizzard'' environment (Kimball and Munir, 1971) were evaluated to determine their corrosion rates on each of the six alloys, plus steel as a standard. The ''artificial gizzard'' test, although developed for lead alloy evaluation, proved to reliably simulate the mallard gizzard for both steel and ITN alloys and constitutes a very conservative approach for evaluation of nontoxic shot. This test resulted in corrosion/erosion rates up to twice those measured in steel and Tungsten-Nickel-Iron mallard in-vivo studies (January 4, 2001, 66 FR 737).

The ITN alloys with relatively low concentrations of tungsten and nickel corrode in a manner similar to that of steels. Corrosion rates of such steels are roughly linear over a wide range of exposure time. This corrosion is in contrast with that of alloys such as stainless steel, tungsten-nickel iron, or ''high-alloy'' varieties of ITN, which readily form passivating oxide layers that impede further corrosion. Assuming that the short-term rate of shot weight loss would continue for one month in a static aqueous environment (a conservative assumption, because natural fresh water and seawater environments are dynamic, and because corrosion products forming on metal surfaces tend to progressively retard corrosion rates), the actual EECs are presented in table 6. These data show that the nickel concentration from ITN shot actually will be well below both the acute and chronic criteria for nickel in aquatic settings.

TABLE 6.—ENVIRONMENTAL CONCENTRATIONS OF METALS IN ITN SHOT BASED ON SOLUBILITY TESTING

Alloy (% I/T/N)	Fresh Water EEC (µg/l)			Salt Water EEC (µg/l)		
	Iron	Tungsten	Nickel	Iron	Tungsten	Nickel
1 (70/20/10)	27.16	7.76	3.87	3.36	0.97	0.23
2 (40/20/40)	1.95	0.97	1.95	0	0	0
3 (44/33/23)	12.61	9.69	6.70	10.66	7.99	2.60
4 (10/50/40)	1.45	7.27	5.82	0	0	0
5 (20/70/10)	6.79	23.77	3.40	2.72	20.37	2.90
6 (10/70/20)	0	0	0	0	0	0

ENVIRON-Metal also provided the results of an in-vitro gizzard simulation test conducted to quantify the release of metals in solution under the prevailing pH conditions of the avian gizzard (table 7). These data also demonstrate that the hazards from these alloys to wildlife would be very minimal.

TABLE 7.—METAL LOSS FROM ITN ALLOYS IN A SIMULATED GIZZARD OVER A 14-DAY PERIOD.

Alloy (% I/T/N)	Initial weight of 10 number 4 shot (g)	Weight Loss (mg)			Percent weight loss
		Iron	Tungsten	Nickel	
1 (70/20/10)	1.994	179.90	51.40	25.70	12.9
2 (40/20/40)	2.687	64.00	32.00	64.00	5.9
3 (44/33/23)	2.766	72.60	54.45	37.95	5.9
4 (10/50/40)	3.479	13.10	65.50	52.40	3.7
5 (20/70/10)	3.462	18.80	65.80	9.40	2.7
6 (10/70/20)	3.418	19.40	135.80	38.8	5.7

In Vitro Solubility Evaluation of TB Shot

The EEC for copper EEC was over 138 times the freshwater acute criterion of 13 g/l, and 200 times the freshwater chronic criterion of 9.0 g/l. However, Olin noted that the very conservative assumptions used to calculate the copper EEC are only an indication of the likely effect of deposition of TB shot in an aquatic setting. Therefore, as an addendum to the application for TB shot, Olin had an in-vitro dissolution test in water conducted. The test was conducted to quantify the release of metals from TB shot at pH values of 5.6, 6.6, and 7.6 in synthetic buffered waters. The highest EEC for copper from the dissolution evaluations was 0.15 µg/l at pH 5.6. The hardness-adjusted chronic water quality criterion for copper was 9.7 µg/l, approximately 65 times the worst-case EEC. Therefore, detrimental effects in aquatic systems from dissolution of TB shot would be highly unlikely.

Olin provided the results of an in-vitro gizzard simulation test conducted to quantify the release of metals in solution under the prevailing pH conditions of the avian gizzard. The simulation test demonstrated that a number 4 TB shot would release about 0.67 mg of the alloy per day. This, in turn, would mean release of approximately 0.24 mg of copper per day.

Olin pointed out that the theoretical availability of copper from this in-vitro gizzard simulation test should be considered maximal when compared to the Irby *et al.* (1967) study results or the CMTA (1980) guideline. Unlike the in-vivo gizzard, which resembles an open corrosion system in which the products of the corrosion process are constantly being eliminated (Kimball and Munir 1971), the test design for this in-vitro gizzard simulation was a closed corrosion system. Therefore, fine pieces of shot that would be released, and normally discarded from the gizzard, remained in the dissolution medium and potentially yielded more copper. Additionally, the analytical samples were analyzed for total metals with no

filtration or centrifugation prior to analysis. As a result, the fine pieces of shot that were not fully dissolved and would normally be excreted were included in the total copper concentrations reported.

Summary: Solubility Evaluations

We have previously approved as nontoxic other shot types that contain tungsten, iron, and tin. Previous assessments of nontoxic shot types indicated that the potential release of iron, tungsten, or tin from TICN, ITN, or TB shot should not harm aquatic or terrestrial systems and we believe the small amount of tin in TB shot is not likely to harm waterfowl. The solubility testing further indicates that the release of nickel from ITN shot and copper from TICN or TB shot is not sufficient to present a hazard to aquatic systems or to biota. We propose to approve the four shot types as nontoxic. Our approval is based on the toxicological report, acute toxicity studies, reproductive/chronic toxicity studies, and other published research. The available information indicates that the four shot types are nontoxic when ingested by waterfowl and that they pose no significant danger to migratory birds, other wildlife, or their habitats.

Impacts of Approval of the Four Shot Types

Effects of the Metals

Iron

Iron is an essential nutrient. Iron toxicosis in mammals is primarily a phenomenon of overdosing of livestock. Maximum recommended dietary levels of iron range from 500 p/m for sheep to 3000 p/m for pigs (National Research Council [NRC] 1980). The amount of iron in any of the four shot types would not pose a hazard to mammals.

Chickens require at least 55 p/m iron in the diet (Morck and Austic 1981). There were no ill effects on chickens fed 1,600 p/m iron in an adequate diet (McGhee *et al.* 1965), and chicks tolerated 1,600 p/m iron in the diets that included adequate copper, although decreased weight gains and increased mortality were observed in copper-deficient diets (McGhee *et al.* 1965). At the maximum tolerable level for chronic exposure of 1,000 p/m for poultry (NRC 1980), a 1.8 kg chicken consuming 100 grams of food per day (Morck and Austic 1981) would consume 100 mg iron per day (56 mg per kg of body weight per day).

Deobald and Elvehjem (1935) reported that 4,500 p/m iron in the diet produced rickets in chicks. Adverse effects were not observed when turkey poults were fed diets amended with 440 p/m iron (Woerpel and Balloun 1964).

Turkey poults fed 440 p/m in the diet suffered no adverse effects. The tests, in which eight number 4 tungsten-iron shot were administered to each mallard in a toxicity study indicated that the 45 percent iron content of the shot had no adverse effects on the test animals (Kelly *et al.* 1998).

We are not aware of acute toxicity data for iron in waterfowl. Zinc-coated iron shot appeared to have little or no effect on ducks dosed with eight number 6 shot; mortality and weight loss for treated ducks were comparable to those for control animals (Irby *et al.* 1967).

Game-farm mallards administered eight number 4 pellets of tungsten-iron shot, indicated no adverse effects from either the tungsten or the iron (Kelly *et al.* 1998). This shot formulation has a much greater iron content (45 percent) than do the shot types considered here.

Tungsten

Tungsten salts are toxic to mammals. Lifetime exposure to 5 p/m tungsten as sodium tungstate in drinking water produced no discernible adverse effects in rats (Rattus species) (Schroeder and Mitchener 1975). However, with 100 p/m tungsten as sodium tungstate in drinking water, rats had decreased enzyme activity after 21 days (Cohen *et al.* 1973).

Tungsten may be substituted for molybdenum in enzymes in mammals. Ingested tungsten salts reduce growth, and can cause diarrhea, coma, and death in mammals (*e.g.* Bursian *et al.* 1996, Cohen *et al.* 1973, Karantassis 1924, Kinard and Van de Erve 1941, National Research Council 1980, Pham-Huu-Chanh 1965), but elemental tungsten is virtually insoluble and therefore essentially nontoxic. Tungsten powder added to the food of young rats at 2, 5, and 10 percent by mass for 70 days did not affect health or growth (Sax and Lewis 1989). A dietary concentration of 94 p/m did not reduce weight gain in growing rats (Wei *et al.* 1987). Exposure to pure tungsten through oral, inhalation, or dermal pathways is not reported to cause any health effects (Sittig 1991).

Acute tungsten toxicosis results in death from respiratory paralysis, often preceded by diarrhea and coma. Chronic intoxication is most evident in reduced growth rates. However, the most sensitive sign is reduced xanthine oxidase activity. Xanthine oxidase is an enzyme that is dependent upon molybdenum for proper functioning. It is thought that tungsten readily substitutes for molybdenum, with subsequent reduction in enzyme activity; supplemental dietary molybdenum will reverse the symptoms. The National Research Council Committee on Animal Nutrition recommends a maximum tolerable dose of 20 p/m tungsten in the diet for effective rearing of livestock (NRC 1980).

The LD50 of tungsten as sodium tungstate (Na_2WO_4) administered by intraperitoneal injection is 112 p/b body weight in male rats and 79 p/b body weight in mice (Mus species) (Pham-Huu-Chanh 1965). This would classify tungsten as ''very toxic'' when administered intraperitoneally as a soluble salt. Kinard and Van de Erve (1941) showed that Na_2WO_4 is the most toxic tungsten salt, when compared with tungsten oxide and ammonium paratungstate.

Tungsten administered in the diet had no effects on rats until reaching 150 p/m diet when carcinoma incidence was increased in female Sprague-Dawley rats (Wei *et al.* 1987). Higgins *et al.* (1956a, b) noted that dietary concentrations of 45 or 94 p/m tungsten produced no adverse effects on weight gain in growing rats. Other studies with rats indicate that dietary exposure to 5,000 p/m tungsten oxide (WO_3) or Na_2WO_4 results in 90 percent and 80 percent mortality, respectively, by the 70th day of exposure (NRC 1980). However, lifetime exposure of rats to 5 p/m tungsten as Na_2WO_4 in drinking water resulted in no observable adverse effects (Schroeder and Michener 1975). At 100 p/m tungsten as Na_2WO_4 in drinking water, rats had decreased enzyme activity after 21 days of exposure (Cohen *et al.* 1973).

Goats (Capra hircus) appear to be less tolerant of dietary tungsten. A 5-month exposure to 22.5 p/m dietary tungsten as Na_2WO_4 resulted in depressed liver xanthine oxidase activity in growing kids. Milk production in goats and cows (Bos species) was unaffected by a single oral exposure to 25.0 p/b body weight of Na_2WO_4 (Owen and Proudfoot 1968). Anke and Groppel (1985) established that goats require at least 0.06 p/m tungsten in their diets for optimal reproduction.

Chickens given a complete diet showed no adverse effects of 250 p/m sodium tungstate administered for 10 days in the diet. However, 500 p/m in the diet reduced xanthine oxidase activity and reduced growth of day-old chicks (Teekell and Watts 1959). Adult hens had reduced egg production and egg weight on a diet containing 1,000 p/m tungsten (Nell *et al.* 1981). Ecological Planning and Toxicology (1999) concluded that the No Observed

Adverse Effect Level for tungsten for chickens should be 250 p/m in the diet; the Lowest Observed Adverse Effect Level should be 500 p/m. Kelly *et al.* (1998) demonstrated no adverse effects on mallards dosed with tungsten-iron or tungsten-polymer shot according to nontoxic shot test protocols.

Breeder hen exposure to 250 p/m tungsten as sodium tungstate for 10 days had no adverse effects, but increasing the diet to 500 p/m tungsten for an additional 20 days resulted in decreased xanthine oxidase activity (Teekell and Watts 1959). Similarly, day-old chicks on a 500 p/m tungsten diet with adequate molybdenum showed reduced rate of gain (Selle 1942).

Nell *et al.* (1981) fed laying hens diets containing 1,000 p/m tungsten (unspecified salt) for five months; control diets contained 0.4 p/m tungsten. Hens were artificially inseminated and eggs were collected and set weekly. Three of 40 hens on the high-tungsten diet died, and the remaining 37 had reduced egg production and egg weight. Egg fertility and hatchability were not affected. Liver tungsten was significantly elevated in treated birds, although there was no effect on body weight.

Day-old white leghorn chickens placed on a molybdenum-deficient diet for 35 days showed a decreased rate of growth and increased mortality at 45 p/m tungsten as sodium tungstate (Higgins *et al.* 1956a, b). However, this is not an accurate reflection of tungsten toxicity because low molybdenum levels potentiate the effects of tungsten (NRC 1980).

Ecological Planning and Toxicology (1999) concluded that the No Observed Adverse Effect Level (NOAEL) for tungsten for chickens should be 250 p/m in the diet; the Lowest Observed Adverse Effect Level should be 500 p/m. An adult chicken fed a diet of 1,000 p/m tungsten for 150 days would ingest about 100 mg of tungsten per day, or a total of 15 grams. In the USFWS guidelines for a reproduction study for shot, mallards would receive eight number 4 shot on four dosing periods. A total of 32 TICN shot during the course of the study, each containing 0.2006 grams of tungsten, would result in a total exposure of 6.42 grams of tungsten, if the tungsten in the shot is totally dissolved. This estimated exposure of 6.42 grams of tungsten during a TICN shot mallard reproductive study is about 43 percent of the 15 grams demonstrated to cause reproductive effects in chickens.

The effects of ingestion of tungsten by mallards as elemental metal in a shot pellet were studied by Ringelman *et al.* (1993). Birds were given pellets of 39 percent tungsten, 44.5 percent bismuth, and 16.5 percent tin by weight, per bird. No evidence of toxicity or other histological changes were reported. Tungsten was not detected in liver or kidney tissue.

Dosing mallards with eight number 4 Iron-Tungsten shot (with 55 percent tungsten) also produced no tungsten toxicity in the ducks (Kelly *et al.* 1998). In that study, birds received eight number 4 pellets by oral gavage and were observed for changes in serum enzymes, organ weights, histology of tissues and accumulation of metals in bone. Tungsten was detected in femur, liver, and kidneys of dosed ducks, but no other significant changes were measured. Iron-Tungsten shot eroded by 55 percent and Tungsten-Polymer shot eroded by 80 percent over the course of the study; however, tissue concentrations were lower in the Tungsten-Polymer birds than in the Iron-Tungsten group. The shot were 55 percent tungsten for the Iron-Tungsten formulation and 95.5 percent tungsten for the polymerized shot. The amount of tungsten in TICN shot (40–76 percent) is similar to that in the Iron-Tungsten shot (55 percent). Tungsten-Nickel-Iron shot in the study by Ecotoxicology & Biosystems Associates, Inc. (2000), conducted with a proportion of tungsten similar to that in TICN shot, was not toxic.

Kraabel *et al.* (1996) surgically embedded tungsten-bismuth-tin shot in the pectoralis muscles of ducks to simulate wounding by gunfire and to test for toxic effects of the shot. The shot produced no toxic effects nor induced adverse systemic effects during the 8-week study.

Copper

Copper is a dietary essential for all living organisms. In most mammals, ingestion of one TICN shot pellet would result in release of 8 to 25 mg of copper, not all of which would be absorbed. In humans, ingestion of a pellet could mobilize approximately 8 mg of copper. These low levels of copper would not pose any risk to mammals.

Copper requirements in birds may vary depending on intake and storage of other minerals (Underwood 1971). The maximum tolerable level of dietary copper during the long-term growth of chickens and turkeys is 300 p/m (CMTA 1980). Eight-day-old ducklings were fed a diet supplemented with 100 p/m copper as copper sulfate for eight weeks. They showed greater growth than controls, but some thinning of the caecal walls (King 1975). Studying day-old chicks, Poupoulis and Jensen (1976) reported that no gizzard lining erosion could be detected in chicks fed 125 p/m of copper for four weeks, but they detected slight gizzard erosion in chicks fed 250 p/m copper. The authors found that it required 500 to 1,000 p/m of copper to depress growth and weight gain of chicks. Jensen *et al.* (1991) found that 169 p/m copper in the diet produced maximal weight gain in chickens.

Stevenson and Jackson (1979) studied the influence of dietary copper addition on the body mass and reproduction of mature domestic chickens. Hens fed on a diet containing 250 p/m copper for 48 days showed a similar rate of food intake as control hens that had no copper in their diet. Additionally, the mean number of eggs laid daily did not differ between hens fed 250 p/m copper and the controls. After 4 months of being fed at dietary copper levels in excess of 500 p/m, negative effects on the daily food intake, body mass loss, and egg-laying rates were observed.

At the 300 p/m level for chronic exposure for poultry, a 1.8 kg chicken consuming 100 g of food per day (Morck and Austic 1981) would consume 30 mg of copper per day (16.7 mg of copper per kg of body weight/day). One number 4 TICN shot contains a maximum of 31.7 mg of copper. However, at the 0.233 mg of copper per shot per day release rate from the solubility testing, a bird would have to ingest at least 128 TICN shot to exceed the maximum tolerable level. Thus, the copper release from the TICN shot appears to be well below the level that could cause copper toxicosis in waterfowl. The average amount of copper released from 8 TB nontoxic shot per day is 7.87 mg, so a bird would have to ingest over 30 shot to exceed the maximum tolerable level.

Day-old poults fed diets containing 500 p/m ration for 24 weeks showed reduced growth and increased gizzard histopathology (Kashani *et al.* 1986). Growing domestic turkeys showed no long-term effects when fed 300 p/m copper in the daily diet, but 800 p/m of copper in the diet for 3 weeks inhibited growth with no adverse effects on survival (Supplee 1964). No effect of feeding 400 p/m of copper as copper sulfate to turkey poults in the daily diet for 21 weeks was reported, and it was concluded that poults could tolerate 676 p/m of copper without deleterious effects. Growth was reduced in poults fed 800 p/m and 910 p/m of copper over the same time (Vohra and Kratzer 1968). Their conclusion was supported by another study that found that copper in the diet of domestic turkeys had to rise to 500 to 750 p/m level before signs of slight toxicity appeared, assuming that

adequate methionine also was present (Christmas and Harms 1979).

Henderson and Winterfield (1975) reported acute copper toxicity in 3-week-old Canada geese (Branta canadensis) that had ingested water contaminated with copper sulfate. The authors calculated the copper intake to be about 600 mg copper sulfate/kg body weight, or 239 mg copper/kg. The amount of copper released from eight number 4 shot would be 42.26 mg, which is much less that the 239 p/b toxic level.

Irby *et al.* (1967) dosed 24 Mallard ducks with 8 number 6 pure copper shot to observe if they were toxic over a 60-day exposure period. They calculated that the total mass of copper in the gizzard was 0.6 gram, and observed that none of the ducks died from copper toxicosis after 60 days. TB shot is 35.1 percent copper by weight, so eight shot would contain 0.64 grams of copper.

International Nontoxic Composites, Inc. (2003) reported that pure copper control shot breaks down at the rate of 18.42 mg copper per gram of shot per day, or 11.05 mg copper per day for 0.6 grams of copper shot, under in vitro gizzard simulation test conditions. However, TB shot releases only 4.35 mg copper per gram of shot per day or 7.87 mg of copper per day for 1.81 grams of shot under the same test conditions. This indicates that TB shot should not be a hazard for wildlife that consume it.

The EPA (2002) provided both acute and chronic freshwater quality criteria for copper, which are functions of water hardness. The freshwater acute criterion for a water body with hardness of 100 mg/l, for example, is 13 µg/l, and the chronic criterion is 9.0 µg copper per liter. The EPA acute and chronic saltwater quality criteria are not affected by hardness, and are 4.8 and 3.1 µg/l.

Nickel

Deficiencies have been reported in diets ranging from 2 to 40 billion p/b nickel (NRC 1980). The dietary requirement for nickel has been set at 50 to 80 p/b for the rat and chick (Nielsen and Sandstead 1974). Humans consume up to 900 µg per day as a normal dietary intake (Nieboer *et al.* 1988). Though it is necessary for some enzymes, nickel competes with zinc, calcium, and magnesium for binding sites on most of the metal-dependent enzymes, resulting in various levels of inactivation, although it is essential for functioning of some enzymes, particularly urease (Andrews *et al.* 1988, Nieboer *et al.* 1988). Water-soluble nickel salts are poorly absorbed from the gastrointestinal tract, averaging only 3 percent to 6 percent assimilation efficiency in rats (Nieboer *et al.* 1988).

Rats fed nickel carbonate concentrations up to 1,000 p/m for 3 to 4 months did not show treatment-related effects, nor was body weight of pups affected (Phatak and Patwardhan 1950). Elevated nickel concentrations in pups were observed in the 500 and 1,000 p/m treatment groups. Young rats were fed nickel catalyst (finely divided nickel suspended in vegetable oil and supported on kieselguhr) at 250 p/m for 16 months with no effects (Phatak and Patwardhan 1952).

Rats fed 1,000 p/m nickel sulfate for 2 years exhibited mild effects, such as reduced body weight and liver weight, but increased heart weight (Ambrose *et al.* 1976). Also, there was an increase in the number of stillborn pups and a decrease in weanling weights through three generations. Nickel chloride was most toxic to rats. Young rats decreased food consumption and lost body weight within 13 days in diets containing 1,000 p/m nickel as nickel chloride (Schnegg and Kirchgessner 1976).

Calves showed weight loss and decreased feed intake, organ size, and nitrogen retention when fed 1,000 p/m nickel and nickel carbonate for 8 weeks (O'Dell *et al.* 1970a, 1971). Calves fed 250 p/m nickel did not show effects. Lactating dairy cows were not affected by 50 or 250 p/m dietary nickel (Archibald 1949, O'Dell *et al.* 1970b). Soluble nickel salts are very toxic to mammals, with an oral LD50 of 136 p/b in mice, and 350 p/b in rats (Fairchild *et al.* 1977). Nickel catalyst (finely divided nickel in vegetable oil) fed to young rats at 250 p/m for 16 months, however, produced no detrimental effects (Phatak and Patwardhan 1952).

Water-soluble nickel salts are poorly absorbed if ingested by rats (Nieboer *et al.* 1988). Nickel carbonate caused no treatment effects in rats fed 1,000 p/m for 3 to 4 months (Phatak and Patwardhan 1952). Rats fed 1,000 p/m nickel sulfate for 2 years showed reduced body and liver weights, an increase in the number of stillborn pups, and decrease in weanling weights through three generations (Ambrose *et al.* 1976). Nickel chloride was even more toxic; 1,000 p/m fed to young rats caused weight loss in 13 days (Schnegg and Kirchgestiner 1976).

In chicks from hatching to 4 weeks of age, 300 p/m nickel as nickel carbonate or nickel acetate in the diet produced no observed adverse effects, but concentrations of 500 p/m or more reduced growth (Weber and Reid 1968). A diet containing 200 p/m nickel as nickel sulfate had no observed effects on mallard ducklings from 1 to 90 days of age. Diets of 800 p/m or more caused significant changes in physical condition of the ducklings (Cain and Pafford 1981).

Mallard ducklings fed 1,200 p/m nickel as nickel sulfate from 1 to 90 days of age experienced reduced growth rates, tremors, paresis, and death (71 percent within 60 days) (Cain and Pafford 1981). Weights of ducklings receiving 200 and 800 p/m nickel were not significantly different than controls, but the humerus weight/length ratio, a measure of bone density, was significantly lower than controls among females in the 800 p/m group and all birds in the 1,200 p/m group. There was no mortality in the 200 and 800 p/m groups.

Breeding pairs of mallards were fed diets containing 0, 12.5, 50, 200, and 800 p/m nickel as nickel sulfate for 90 days (Eastin and O'Shea 1981). No treatment-related effects were observed on egg production, hatchability, or survival of ducklings. At the end of the 90-day treatment period, there were no significant differences in hematocrit, concentrations of hemoglobin, plasma triglycerides, cholesterol, or plasma activities of ornithine carbamoyl transferase and alanine aminotransferase. The only treatment-related observation was a black, tarry feces in the 800 p/m group. Assuming a mean daily consumption of 128 grams per bird (Heinz 1979), the 800 p/m treatment group would have consumed 102 mg nickel each day and 9.2 grams of nickel during the course of the 90-day study. In the nontoxic shot Tier 2 approval process, birds could be given eight number 4 shot. For ITN shot, each shot would contain 0.02206 grams of nickel, so each duck would receive 0.176 grams of nickel, assuming complete solubilization of the nickel from the shot during the study. This is a very small fraction of the 9.2 grams of total nickel exposure or 102 mg per day experienced by the mallards in the Eastin and O'Shea (1981) study. Therefore, we expect no effect of the nickel on birds ingesting the shot.

No reproductive or other effects were observed in mallards consuming the equivalent of 102 mg of nickel as nickel sulfate each day for 90 days (Eastin and O'Shea 1981). Therefore, the 15.3 mg of nickel in each TICN shot, if completely eroded and absorbed in 24 hours, would not be expected to affect waterfowl. Based on the 0.221 mg of nickel per shot per day rate of release from the solubility study, a mallard would have to ingest in excess of 450 TICN shot to exceed the 102 mg nickel amount. Additionally, metallic nickel likely has a lower absorption from the

gastrointestinal tract than does the nickel sulfate used in the mallard reproduction study, further decreasing the absorbed dose of TICN shot compared to the published toxicity study described above.

Adult mallards dosed with eight tungsten-nickel-iron number 4 pellets were fed a whole kernel corn and grit and observed for signs of toxicity for 30 days following dosing (January 4, 2001; 66 FR 737). No adverse effects were observed on body weight, food consumption or clinical chemistry, hematology, and histopathology. The tungsten-nickel-iron pellets lost an average of 7.9 percent of their initial weight during the study, releasing nickel at a rate of 1.85 mg per day per bird, for a total of 55.5 mg over the 30-day study.

In a Tier 2 dosing study under the regulations governing approval of nontoxic shot, mallard ducks would each be given eight number 4 TICN shot (each containing 0.02206 grams of nickel) during the study. A duck would be exposed to 0.176 grams of nickel during the study if the nickel were completely dissolved. This is much less than the nickel exposure experienced by the mallards in the Eastin and O'Shea (1981) study. We conclude that the nickel in TICN shot will not be significant to waterfowl that ingest the shot.

Water hardness is the dominant factor governing nickel effects on aquatic biota (Stokes 1988). Toxicity of nickel to aquatic organisms is dependent upon water hardness, pH, and organic content, as well as other minor environmental parameters (Allen and Hansen 1996). In soft water, as little as 7 p/b nickel may be acutely toxic to fish fry, while in harder waters toxicity thresholds may be an order of magnitude higher (Stokes 1988).

The EPA (1986) acute water quality criteria reflect this insensitivity of aquatic organisms to nickel. For a water body with hardness of 50 mg/l (generally associated with highly oligotrophic systems that would not support large numbers of waterfowl), the criterion is 1,400 µg/l. However, early fish life stages are more sensitive to nickel (Stokes 1988), which is reflected in the order of magnitude lower Freshwater Chronic Criterion of 160 µg/l at a hardness of 50 mg/l (EPA 1986).

The saltwater chronic criterion of 8.3 µg/l is much lower than the measured mysid shrimp (Mysidopsis bahia) chronic value, which is from the only chronic saltwater study in the EPA guidelines (EPA 1986).

Toxicity of nickel to aquatic organisms is dependent upon water hardness, pH, and organic content, as well as other minor environmental parameters (Allen and Hansen 1996). In soft water, as few as 7 p/b may be acutely toxic to fish fry, but in harder waters toxicity thresholds may be an order of magnitude higher. General toxicity ranges for aquatic organisms are as variable, with an acute toxicity of as low as 82 µg/l for some oligochaetes to 138,000 µg/l for some gastropods; chronic toxicity values range from fewer than 100 µg/l for some green algae to 10,000 µg/l for filamentous algae (Stokes 1988).

The freshwater criterion maximum concentration is dependent on hardness. For a water body with hardness of 50 mg/l (generally associated with highly oligotrophic systems that would not support large numbers of waterfowl), this results in a criterion of 1,400 µg/l. However, because early fish life stages are more sensitive to nickel, the freshwater chronic criterion is 160 µg/l at a hardness of 50 mg/l (EPA 1986).

Tin

It is generally agreed that inorganic tin and tin compounds are comparatively harmless (Eisler 1989). Inorganic tin and its salts are poorly absorbed, their oxides are relatively insoluble, and they are rapidly lost from tissues (see Eisler 1989 for reviews). Reviews indicate that elemental tin is not toxic to birds (Cooney 1988, Eisler1989). Tin shot designed for waterfowl hunting is used in several European countries. We are aware of no reports that suggest that tin shot causes toxicity problems for wildlife.

Tin (II) chloride was toxic to juvenile eels at 6.0 mg/l and 1.2 mg/l, with death coming at 2.8 and 50 hours, respectively. This inorganic tin salt was also toxic to daphnids, at concentrations of 2.5 mg/l or more. Metelev *et al.* (1971) found that 1 g/l of Tin (II) chloride dihydrate (530 mg of tin per liter) was lethal to all fish species tested (Bandman 1993).

Grandy *et al.* (1968) and the Huntingdon Research Centre (1987) conducted 30-day and 28-day, respectively, acute toxicity tests on mallard ducks by placing tin pellets inside the digestive tract or tissues of ducks. They reported that all treated ducks survived without deleterious effects.

Ringelmann *et al.* (1993) examined the effects of Tungsten-Bismuth-Tin shot consumption in ducks. The authors found no signs of toxicosis, and tin was not detected in the liver or kidney (<6 p/m) during the 32-day test period. In a 30-day dosing study of game-farm mallards dosed with eight number 4 size tin shot, there were no overt signs of toxicity or treatment-related effects on body weight. Tin was not detected in any tissues (Gallagher *et al.* 1999).

The 2 percent tin in bismuth-tin shot produced no toxicological effects in ducks during reproduction. It did not affect the health of ducks, the reproduction by male and female birds, or the survival of ducklings over the long term (Sanderson *et al.* 1997).

Chronic and acute studies documenting the nontoxic properties of 99.9 percent tin shot were conducted for the application for USFWS approval of tin shot as a nontoxic alternative. A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight number 4 sized shot. Additionally, there were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds. A 30-day acute study was also completed by the International Tin Research Institute (**Federal Register** 64:17308, 1999). Treatment mallards were dosed with eight number 4 tin shot and hematocrit and hemoglobin concentrations, body weight and indications of toxicity were compared to those of control (no shot) and steel shot-dosed birds. No adverse effects were seen in ducks dosed with tin. Hematocrit and hemoglobin concentrations did not differ from those of either negative control group, nor were there treatment-related effects on body weight. Ducks dosed with tin exhibited no sign of toxicity.

In a study by Kraabel *et al.* (1996), shot pellets containing 39 percent tungsten, 44.5 percent bismuth, and 16.5 percent tin were embedded into the breast muscle of mallards. There were no adverse systemic effects observed in the study and the localized inflammatory reactions surrounding the shot were reduced in the tin-containing shot when compared to the steel shot control group.

Based on the toxicological report and toxicity tests, we concluded that shot that was 99.9 percent tin posed no significant danger to migratory birds or other wildlife and their habitats (65 FR 76886, December 7, 2000). Temporary approval was given because field detection techniques had not been approved, not due to any toxicity concerns. In support of the nontoxic application, chronic and acute toxicity tests demonstrated no adverse effects of tin shot on mallards. We do not believe the tin in any of the proposed shot types that contain it will pose toxicological risks due to wildlife.

Impacts of Approval of Alloys of Previously Approved Metals

We propose to extend the past approvals of some nontoxic shot types to broader alloys. We have, for example, approved nontoxic shot of almost 100 percent tungsten, and steel shot is essentially 100 percent iron. We are not aware of any synergistic effects of these metals, and approval of other shot types containing them in different proportions has indicated that negative effects on wildlife, fish, or their habitats from approval of alloys of these metals are very unlikely. Therefore, we propose to approve alloys containing any proportion of tungsten and 1 percent or more iron.

Similarly, as noted above, we gave temporary approval to shot of 100 percent tin (65 FR 76885), though the submitter did not seek final approval of that shot type. We also propose to approve shot alloys with any proportions of tungsten and tin and at least 1 percent iron.

Effects of the Approvals on Migratory Waterfowl

Approving additional nontoxic shot types will likely result in a minor positive long-term impact on waterfowl and wetland habitats. Approval of the four shot types and additional alloys as nontoxic would have a positive impact on the waterfowl resource.

Effects on Endangered and Threatened Species

The impact on endangered and threatened species of approval of the four shot types and the additional alloys would be very small, but positive. The metals in all four shot types and the additional alloys have been approved in other nontoxic shot types, and we see no potential effects on threatened or endangered species due to approval of these shot types.

Effects on Ecosystems

Previously approved shot types have been shown in test results to be nontoxic to the migratory bird resource, and we believe that they cause no adverse impact on ecosystems. There is concern, however, about noncompliance and potential ecosystem effects. The use of lead shot has a negative impact on wetland ecosystems due to the erosion of shot, causing sediment/soil and water contamination and the direct ingestion of shot by aquatic and predatory animals. Though we believe noncompliance is of concern, approval of the four shot types and the additional alloys will have little impact on the resource.

Cumulative Impacts

We foresee no negative cumulative impacts of approval of the four shot types and the additional alloys for waterfowl hunting. Their approval should help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots.

Literature Cited

For a complete list of the literature cited in this proposed rule, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Comments

In accordance with the Administrative Procedures Act and our nontoxic shot approval regulations, we seek comments on this proposal. Of particular relevance is information regarding the potential impacts of these shot types and the approval of alloys of metals already approved in other formulations on migratory birds, other wildlife, and their habitats.

In addition, Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, ''§ 20.134 Approval of nontoxic shot types.'') (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

You may submit written comments on this proposal to the location identified in the **ADDRESSES** section, or you may submit electronic comments to the internet address or the e-mail address listed in the **ADDRESSES** section. We must receive your comments before the date listed in the **DATES** section. While our normal practice is to open public comment periods on our proposed rules for 60 days, in this case we are opening the comment period for only 30 days. We believe a 30-day comment period will be sufficient because we have approved several other nontoxic shot types through the rulemaking process and have received very few comments on those rulemaking actions and because the changes in this proposed rule should not be controversial. Following review and consideration of comments, we will issue a final rule on the proposed regulation changes.

When submitting electronic comments, please include your name and return address in your message, identify it as comments on the nontoxic shot proposed rule, and submit your comments as an ASCII file, preferably as part of the e-mail text. Include RIN 1018–AU04 in the subject line of your message. Do not use special characters or any encryption. Written comments on this proposed rule must be on 8½-inch by 11-inch paper.

We make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. We will not accept anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments will become part of the Administrative Record for the review of the application. You may inspect comments at the mailing address in **ADDRESSES** during normal business hours.

The Draft Environmental Assessment (DEA) for approval of the four shot types is available from the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, VA 22203–1610. You may call 703–358–1825 to request a copy of the DEA.

The complete file for this rule is available, by appointment, during normal business hours at the same address. You may make an appointment at 703–358–1825 to review the files.

Required Determinations

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500–

1508), though all of the metals in these shot types have been approved in other shot types and are not likely to pose adverse toxicity effects on fish, wildlife, their habitats, or the human environment, we have prepared Draft Environmental Assessments for this action. We will finalize the Environmental Assessments before we publish a final rule on this action.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat.'' We have concluded that because all of the metals in these shot types have been approved in other shot types and will not be available to biota in significant amounts due to use of any of the four shot types, this action will not affect endangered or threatened species.

Executive Order 12866

This rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit economic analysis is not required. This action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. No other Federal agency has any role in regulating nontoxic shot for migratory bird hunting. The action is consistent with the policies and guidelines of other Department of the Interior bureaus. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because it has no mechanism to do so. This action will not raise novel legal or policy issues because the Service has already approved several other nontoxic shot types.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. This rule proposes to approve four additional types of nontoxic shot that may be sold and used to hunt migratory birds. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot types already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

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. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no new information collection requirements. OMB has assigned control number 1018–0067 to the collection of information that shot manufacturers are required to provide to us for the nontoxic shot approval process. This approval expires December 31, 2006. For further information, see 50 CFR 20.134.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not significantly or uniquely affect small governments or produce a Federal mandate of $100 million or more in any given year. Therefore, this rule does not constitute a significant regulatory action under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

In promulgating this rule, we have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings assessment is not required.

Federalism Effects

This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. In accordance with Executive Order 13132, this regulation does not have significant federalism effects, nor does it have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have determined that this rule has no effects on Federally recognized Indian tribes.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

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

Authority: 16 U.S.C. 703–712; 16 U.S.C. 742a–j; Pub. L. 106–108.

2. Section 20.21 is proposed to be amended by revising paragraph (j)(1) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j)(1) While possessing loose shot for muzzle loading or shotshells containing other than the following approved shot types.

Approved shot type	Percent composition by weight	Field testing device
bismuth-tin	97 bismuth, 3 tin	Hot Shot®*.
iron (steel)	iron and carbon	Magnet or Hot Shot®.
iron-tungsten	any proportion of tungsten, ≥ 1 iron	Magnet or Hot Shot®.
iron-tungsten-nickel.	≥ 1 iron, any proportion of tungsten, up to 40 nickel	Magnet or Hot Shot®.
tungsten-bronze	51.1 tungsten, 44.4 copper, 3.9 tin, 0.6 iron and 60 tungsten, 35.1 copper, 3.9 tin, 1 iron.	Rare Earth Magnet.
tungsten-iron-copper-nickel.	40–76 tungsten, 10–37 iron, 9–16 copper, 5–7 nickel	Hot Shot® or Rare Earth Magnet.
tungsten-matrix	95.9 tungsten, 4.1 polymer	Hot Shot®.
tungsten-polymer	95.5 tungsten, 4.5 Nylon 6 or 11	Hot Shot®.
tungsten-tin-iron	any proportions of tungsten and tin, ≥ 1 iron.	Magnet or Hot Shot®.
tungsten-tin-bismuth	49–71 tungsten, 29–51 tin; 0.5–6.5 bismuth, 0.8 iron.	Rare Earth Magnet.
tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, 2.8 nickel	Magnet.

* The information in the ''Field Testing Device'' column is strictly informational, not regulatory.
** The ''Hot Shot'' field testing device is from Stream Systems of Concord, CA.

* * * * *

Dated: July 26, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–16718 Filed 8–23–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 70, No. 163

Wednesday, August 24, 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

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection. This information collection is required in petitions filed with the Foreign Agricultural Service for emergency relief from duty-free imports of perishable products under section 204(d) of the Andean Trade Promotion and Drug Eradication Act.

DATES: Comments on this notice must be received on or before October 24, 2005, to be assured consideration.

ADDRESSES: Mail or deliver comments to Omar Karawa, Import Policies and Programs Division, Foreign Agricultural Service, Stop 1021, 1400 Independence Ave., SW., Washington, DC 20250–1021, or e-mail to *Omar.Karawa@fas.usda.gov*, or fax to (202) 720–0876.

FOR FURTHER INFORMATION CONTACT: Omar Karawa, Stop 1021, 1400 Independence Avenue, SW., Washington, DC 20250–1021, (202) 720–1336.

SUPPLEMENTARY INFORMATION: *Title:* Emergency Relief from Duty-Free Imports of Perishable Products from Andean Countries.

OMB Number: 0551–0033.

Expiration Date of Approval: December 31, 2005.

Expiration Date of Approval: December 31, 2005.

Type of Request: Extension for a currently approved information collection.

Abstract: The Andean Trade Preference Act (the ''Act'') (19 U.S.C. 3201 *et seq.*) was retitled the ''Andean Trade Promotion and Drug Eradication Act'' under section 3101 of H.R. 3009, the ''Trade Act of 2002''. The Act authorized the President to proclaim duty-free treatment for imports from Bolivia, Colombia, Ecuador and Peru, except for specifically excluded products. Section 3104 of H.R. 3009 amended the Act to extend the expiration date from December 4, 2001 to December 31, 2006, and made the Act retroactive to December 4, 2001. Section 3103(a) of H.R. 3009 renumbered section 204(e) of the Act as section 204(d). Section 204(d) provides for emergency relief from duty-free imports of certain perishable agricultural products from the beneficiary Andean countries. Section 204(d) provides, in part, that a petition for emergency import relief may be filed with the Secretary of Agriculture at the same time a petition for import relief is filed with the United States International Trade Commission (ITC) pursuant to the provisions of section 201 of the Trade Act of 1974, as amended (19 U.S.C. 2251). Emergency import relief is limited to restoration of MFN tariffs during the period of the ITC's investigation. Under 7 CFR 1540 Subpart C, a procedure is provided for an entity to submit a petition for emergency relief to the Administrator of the Foreign Agricultural Service. Section 150.43 requests that the following information, to the extent possible, be included in a petition: A description of the imported perishable product concerned; country of origin of imports; data indicating increased imports are a substantial cause of serious injury (or threat of injury) to the domestic industry producing a like or directly competitive product; evidence of serious injury, and a statement indicating why emergency action would be warranted. The information collected provides essential data for the Secretary regarding specific market conditions with respect to the industry requesting emergency relief. Within 14 days of the filing of a petition, the Secretary shall advise the President if there is reason to believe that emergency action is warranted, or to publish a notice of a determination not to recommend emergency action and advise the petitioner.

Estimate of Burden: Public reporting burden for this collection of information is estimated at $553.00.

*Respondents:*Non-profit institutions, businesses, or farms.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 23 hours. Copies of the information collection can be obtained from Liliana Silva-Castellanos, the Agency Collection Coordinator, at (202) 690–4055.

Requests for Comments: The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days or the publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

Signed at Washington, DC, on August 5, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05–16766 Filed 8–23–05; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Willamette National Forest is seeking nominees for five positions on the Opal Creek Advisory Council. The Council was originally established in June 2000 with 13 members. About half of the current

members will remain on the Council to provide continuity for new members.

The Advisory Council makes recommendations to the Detroit District Ranger on matters relating to the management of the Opal Creek Scenic Recreation Area (SRA). The Advisory Council is composed of a diverse group of citizens, which allows for sharing of technical knowledge and personal experience. Members represent interests including, but not limited to: timber industry; environmental organizations; mining industry; land inholders within the Opal Creek Wilderness and SRA; economic development interests; and Indian tribes. Other members serving on the Council as required by the Act represent Marion County, communities within a 25 mile radius of the SRA, State of Oregon, and City of Salem.

Positions to be filled are from timber industry, in-holders, environmental organizations, mining industry and one at-large member. Examples of ''at-large'' members who may be interested in serving on this Council include recreation interests, adjacent landowner, educators and researchers.

Nominees must be United States citizens, at least 18 years old. Willamette officials will recommend nominees' appointments to the Secretary of Agriculture based on criteria which includes long-time familiarity with the Opal Creek SRA, knowledge and understanding of other cultures, ability to actively participate in diverse team settings, and respect and credibility in local communities.

Nominations are due September 19, 2005. People interested in more information or a nomination packet should contact the Detroit Ranger District at 503–854–3366. The nomination packet can also be downloaded from the Opal Creek Advisory Council section of the Willamette National Forest Web site: *http://www.fs.fed.us/r6/willamette/manage/opalcreek/index.html.*

Dated: August 18, 2005.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 05–16819 Filed 8–23–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Measures for Allocating Uses for Outfitting and Guiding Activities on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of interim directive.

SUMMARY: The Forest Service is issuing an interim directive (ID) to Forest Service Handbook 2709.11, Chapter 40, to enumerate measures, other than service days, that may be used to allocate use for outfitting and guiding activities on National Forest System lands. This ID is issued as number FSH 2709.11–2005–1.

DATES: This ID is effective August 24, 2005.

ADDRESSES: ID 2709.11–2005–1 is available electronically from the Forest Service via the World Wide Web at *http://www.fs.fed.us/im/directives.* A paper copy may be obtained by contacting Carolyn Holbrook, Recreation and Heritage Resources Staff, by mail at Mail Stop 1124, Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1124; or by telephone at (202) 205–1399.

FOR FURTHER INFORMATION CONTACT: Carolyn Holbrook, Recreation and Heritage Resources Staff (202) 205–1399.

SUPPLEMENTARY INFORMATION: The Forest Service is issuing ID 2709.11–2005–1 to incorporate minor changes to the current direction in FSH 2709.11, section 41.53, regarding methods of measuring authorized use in a permit for outfitting and guiding on National Forest System lands. The ID adds definitions for: ''allocation of use,'' ''quota,'' and ''service day'' (sec. 41.53c); provides that quotas and other units of measure may be used in lieu of service days to allocate and authorize use (sec. 41.53h, para. 2b(1) and sec. 41.53j, para. 4); and adds transportation livestock as an item to be included and accounted for in the permit, operating plan, or annual itinerary (sec. 41.53j, para.4).

Dated: August 12, 2005.

Jack G. Troyer,

Acting Chief.

[FR Doc. 05–16767 Filed 8–23–05; 8:45 am]

BILLING CODE 3410–11–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: Annual Retail Trade Report.

Form Number(s): SA–44, SA–44A, SA–44C, SA–44E, SA–44N, SA–44S, SA–45, SA–45C, SA–721A and SA–721E.

Agency Approval Number: 0607–0013.

Type of Request: Extension of a currently approved collection.

Burden: 11,095 hours.

Number of Respondents: 21,570.

Avg Hours Per Response: 31 minutes.

Needs and Uses: The U.S. Census Bureau requests continued OMB approval of the Annual Retail Trade Survey (ARTS). The ARTS provides the only continuing official measure of annual total retail sales, e-commerce sales, end-of-year inventories, sales/inventory ratios, purchases, inventory valuation methods, gross margin, and end-of-year accounts receivables for retailers and annual sales and e-commerce sales for accommodation and food services firms in the United States.

The data collected in the ARTS provide a current statistical picture of the retail and food services and accommodations portions of consumer activity. Also, the estimates compiled from this survey provide valuable information for economic policy decisions and actions by government and are widely used by private businesses, trade organizations, professional associations, and others for market research and analysis. The sales and receipts are used by the Bureau of Economic Analysis (BEA) in determining the consumption portion of the Gross Domestic Product (GDP).

The BEA is the primary Federal user of the data collected in the ARTS and the information collected is critical to the quality of several of BEA's key programs. The data on retail sales are used to prepare detailed annual personal consumption expenditures estimates; merchandise inventories, valuation methods and merchandise purchases are used to prepare annual estimates of change in the business inventory component of GDP. Sales, merchandise purchases, inventories, inventory valuation and sales tax data are used to prepare estimates of GDP by industry and to derive industry output for the input-output accounts.

In addition, the results of the ARTS are used to benchmark estimates of monthly retail sales, e-commerce sales, and inventories from the Current Retail Sales and Inventory Survey (OMB Approval #0607–0717), which are key economic indicators that provide timely input for computation of the national accounts. Accounts receivable balances are used by the Federal Reserve Board in measuring consumer credit.

Private businesses use these estimates to determine market share and to perform other analysis. It is extremely important to both the public and the private sectors that accurate and timely measures of consumer spending be made readily available.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

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 e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 18, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–16830 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–07–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: 2006 Census Test.

Form Number(s): DD–1, DD–1(E/S), DD–A(RQ), DD–1(E), DD–1(E)SUPP, DD–1(E)R, DD–20, D–20(S).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 37,808 hours.

Number of Respondents: 239,890.

Avg Hours Per Response: Households and reinterview—10 minutes; Persons in Gqs and reinterview—5 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to collect data from the public as part of the 2006 Census Test. The 2006 Census Test is one of a number of tests planned to improve the 2010 Census.

Census 2000 was an operational and data quality success. However, that success was achieved at great operational risk and great expense. In response to the lessons learned from Census 2000, and in striving to better meet our Nation's ever-expanding needs for social, demographic, and geographic information, the U.S. Department of Commerce and the Census Bureau have developed a multi-year effort to completely modernize and re-engineer the 2010 Census of Population and Housing.

In order to meet our constitutional and legislative mandates, we must implement a re-engineered 2010 Census that is cost-effective, improves coverage, and reduces operational risk. Achieving this strategic goal requires an iterative series of tests that will provide an opportunity to evaluate new or improved question wording, methodology, technology, and questionnaire design. The 2006 Census Test is part of this testing cycle, which has been planned to allow us to finalize methodologies and operational procedures in time to conduct a Dress Rehearsal in 2008 and a successful census in 2010.

The 2006 Census Test draws heavily on the results of the 2004 Census Test, a site test that we conducted to examine the feasibility of collecting personal information during Non Response Followup (NRFU) using Hand Held Computers (HHCs). The 2004 Census Test was the first large-scale test of a HHC in census-like conditions. The 2004 Census Test also studied new methods to improve coverage, including procedures for reducing duplication, and tested respondent reaction to revised race and Hispanic origin questions, examples, and instructions.

The 2006 Census Test is a site test that includes a replacement questionnaire (in the mailout/mailback site), a NRFU component, an enumeration of group quarters (GQs), and an update/enumerate operation that includes activities planned to increase response rates on an American Indian Reservation. Like the other tests leading up to the 2010 Census, this test is designed to evaluate new methods and systems intended to improve accuracy, reduce risks, and/or contain costs. In conjunction with the results of cognitive tests, focus groups, the 2003 National Census Test, the 2004 Census Test, and the 2005 National Census Test, the 2006 Census Test will help us develop the optimal data collection methodology for the 2010 Census.

There are two test sites for the 2006 Census Test—selected census tracts in Travis County, Texas, and the Cheyenne River American Indian Reservation and Off-Reservation Trust Land in South Dakota.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local, or Tribal government.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 141 and 193.

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 e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 19, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–16831 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Kavita Mohan or Jeff Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3542 or (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION: On January 31, 2005, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (HRS) from India covering

shipments of HRS by Essar Steel Limited (Essar) to the United States for the period from December 1, 2003, through November 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 4818 (January 31, 2005). The preliminary results are currently due no later than September 2, 2005.

Extension of Time Limit for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of the date of publication of the order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

The Department finds that it is not practicable to complete the preliminary results of this review within this time limit because additional time is needed to fully analyze significant amounts of new data only recently submitted. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results of this review until no later than January 3, 2006, which is the next business day after 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: August 18, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4632 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We preliminarily determine that certain orange juice from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Brazil.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–4593, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain orange juice from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Brazil. The critical circumstances analysis for the preliminary determination is discussed below under the section ''Critical Circumstances.''

Background

Since the initiation of this investigation (*see Notice of Initiation of Antidumping Duty Investigation: Certain Orange Juice from Brazil*, 70 FR 7233 (Feb. 11, 2005) (*Initiation Notice*)), the following events have occurred.

On March 3, 2005, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain orange juice from Brazil are materially injuring the United States industry. *See* ITC Investigation No. 731–TA–1089.

On March 7, 2005, we selected Sucocitrico Cutrale, S.A. (Cutrale), the largest producer/exporter of certain orange juice from Brazil, as a mandatory respondent in this proceeding and issued Cutrale an antidumping questionnaire.

On March 14, 2005, we also selected the two next largest producers/exporters of certain orange juice from Brazil (*i.e.*, Fischer S/A - Agroindustria (Fischer) and Montecitrus Industria e Comercio Limitada (Montecitrus)) as mandatory respondents in this proceeding. *See* the March 14, 2005, memorandum to Louis Apple, Director, Office 2, from Elizabeth Eastwood, Jill Pollack, Nichole Zink, and Ryan Douglas entitled, ''Antidumping Duty Investigation of Certain Orange Juice from Brazil - Selection of Respondents.'' We issued antidumping questionnaires to these exporters on March 14, 2005.

On March 31, 2005, the petitioners[1] requested that the Department ''clarify'' the scope of the instant investigation to include exports of FCOJM from producers and exporters previously covered by a separate antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. From April 4 through April 14, 2005, we received comments on the petitioners' request from various Brazilian orange juice producers, as well as additional comments from the petitioners.

On April 11, 2005, Cutrale requested that the Department revise the period of investigation (POI) in this proceeding.

We received section A questionnaire responses from Cutrale and Fischer on April 11, 2005. On April 15 and 18, 2005, respectively, the Department issued supplemental section A questionnaires to Fischer and Cutrale. On April 19, 2005, we received a section A questionnaire response from Montecitrus.

On April 22, 2005, we rejected Cutrale's request to revise the POI. *See* the April 22, 2005, memorandum to Louis Apple, Director, Office 2, from Jill

[1] The petitioners in this investigation are the Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), Citrus World, Inc., and Southern Garden Citrus Processing Corporation (doing business as Southern Gardens).

Pollack, Analyst, entitled, ''Request by Sucocitrico Cutrale Ltda. for a Revised Period of Investigation in the Antidumping Duty Investigation of Certain Orange Juice from Brazil.''

We received section B and C questionnaire responses from Cutrale and Fischer on April 27, and 29, 2005, respectively.

On May 5 and 6, 2005, respectively, we issued a second supplemental section A questionnaire to Cutrale, and a supplemental questionnaire regarding sections B and C to Fischer.

On May 6, 2005, Cutrale and Fischer submitted responses to the Department's first supplemental section A questionnaires.

On May 9, 2005, Montecitrus withdrew its participation from this antidumping proceeding and requested that the Department remove from the record of this proceeding all documents containing business proprietary information submitted by or on behalf of Montecitrus. On May 26, 2005, we certified to the destruction of all business proprietary information.

On May 11 and 16, 2005, respectively, the petitioners alleged that Cutrale and Fischer made home market sales below the cost of production (COP) and, therefore, requested that the Department initiate a sales–below-cost investigation of these respondents.

On May 12, 2005, Cutrale submitted its response to the Department's second supplemental section A questionnaire.

On May 23 and 31, 2005, respectively, we initiated sales–below-cost investigations for Cutrale and Fischer and, as a result, requested that Cutrale and Fischer respond to section D of the questionnaire. *See* the May 23, 2005, memorandum to Louis Apple, Director, Office 2, from Nichole Zink, Analyst, entitled, ''Petitioners' Allegation of Sales Below the Cost of Production for Sucocitrico Cutrale Ltda'' (Cutrale Cost Initiation Memo) and May 31, 2005, memorandum to Louis Apple, Director, Office 2, from Elizabeth Eastwood, Senior Analyst, entitled, ''Petitioners' Allegation of Sales Below the Cost of Producti6n for Fischer S/A–Agroindustria'' (Fischer Cost Initiation Memo).

On May 27, 2005, we issued a second supplemental section A questionnaire to Fischer.

On June 2, 2005, the petitioners made a timely request pursuant to 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination, pursuant to section 733(c)(1)(A) of the Act. The petitioners stated that a postponement of the preliminary determination was necessary in order to permit the Department and the petitioners to fully analyze the information that had been submitted in the investigation and to analyze cost information.

On June 7 and 9, 2005, respectively, we issued a supplemental questionnaire regarding sections B and C to Cutrale and a supplemental questionnaire regarding section B to Fischer.

On June 10, 2005, Fischer submitted its response to the Department's second supplemental section A questionnaire.

On June 7, 2005, pursuant to sections 733(c)(1)(A) and (b)(1) of the Act and 19 CFR 351.205(f), the Department postponed the preliminary determination until no later than August 16, 2005. *See Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Orange Juice from Brazil*, 70 FR 34086 (June 13, 2005).

On June 21, 2005, Cutrale submitted its response to the Department's section D questionnaire.

On June 24, 2005, we issued a supplemental section C questionnaire to Fischer.

On June 27, 2005, we informed the petitioners that in order for the Department to consider revising the scope of this proceeding, they would need to amend the original petition. For further discussion, see the ''Scope Comments'' section of this notice below.

On June 28, 2005, Fischer submitted its response to the Department's section D questionnaire.

On June 29, 2005, the Department issued its third supplemental section A questionnaire to Fischer.

On July 1, 2005, Fischer responded to the Department's supplemental section B questionnaire. On July 5, 2005, Cutrale responded to the Department's supplemental sections B and C questionnaire.

On July 13, 2005, Fischer submitted its response to the Department's third supplemental section A questionnaire.

On July 14, 2005, we issued a supplemental section D questionnaire to Fischer.

On July 22, 2005, Fischer submitted its response to the Department's supplemental section C questionnaire.

On July 25, 2005, the petitioners alleged that critical circumstances exist with respect to imports of certain orange juice from Brazil. Accordingly, pursuant to section 732(e) of the Act, on July 28, 2005, we requested information from Cutrale and Fischer regarding monthly shipments to the United States during the period June 2001 through June 2005.

On July 26, 2005, and August 4, 2005, respectively, Cutrale and Fischer submitted their responses to the Department's supplemental section D questionnaires.

On August 1 and 2, 2005, respectively, Cutrale and Fischer requested that the Department postpone its final determination in the event of an affirmative preliminary determination, in accordance with section 735(a)(2) of the Act.

On August 3, 2005, we issued a second supplemental questionnaire regarding sections B and C to Cutrale. On August 10, 2005, we issued additional supplemental questionnaires to both respondents. Because the deadline for this information is after the date of the preliminary determination, we will consider it for the final determination.

On August 11, 2005, we received monthly shipment information from Cutrale and Fischer. Because this information was received too late for use in the preliminary determination, we will consider it in the final determination. The critical circumstances analysis for the preliminary determination is discussed below under ''Critical Circumstances.''

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on August 1 and August 2, 2005, respectively, Cutrale and Fischer requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Cutrale and Fischer account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are

postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is October 1, 2003, through September 30, 2004. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2004).

Scope of Investigation

The scope of this investigation includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as FCOJM; and (2) pasteurized single–strength orange juice which has not been concentrated, referred to as NFC.

At the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Cutrale, Fischer[2], and Montecitrus.

The Department also revoked the pre–existing antidumping duty order on FCOJ with regard to two additional companies, Coopercitrus Industrial Frutesp (Frutesp) and Frutropic S.A. (Frutropic). *See Frozen Concentrated Orange Juice; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order*, 56 FR 52510 (Oct. 21, 1991), and *Frozen Concentrated Orange Juice; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 59 FR 53137 (Oct. 21, 1994). After revocation, both of these companies experienced changes in their corporate organization and are now doing business under the name COINBRA–Frutesp. Therefore, in order to determine whether these companies are subject to this proceeding, the Department must make successor–in-interest findings with respect to each entity. We intend to make such findings no later than the final determination in this case. We note that, should the Department find COINBRA–Frutesp to be the successor–in-interest to one or both of these companies, exports of FCOJM by the successor company will be included in this proceeding. *See* the ''Successor–in-Interest'' section of this notice, below, for further discussion.

Excluded from the scope of the investigation are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42° Brix, in a frozen state, packed in retail–sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather the written description of the scope of this investigation is dispositive.

Successor–in-Interest

As noted above, at the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. Therefore, the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Three of the revoked companies, Citrosuco, Frutesp, and Frutropic, informed the Department that they have undergone certain ownership changes since the time of their revocation and are now doing business under different names. In our notice of initiation, we indicated that we intended to make successor–in-interest determinations with respect to these companies in order to determine if the FCOJM exports of the ''new'' companies fall within the scope of this proceeding.

Regarding Citrosuco, prior to the initiation of this investigation, Citrosuco informed the Department that it is now doing business under the name Fischer, and it claimed that Fischer is the successor–in-interest to Citrosuco. On March 8, 2005, we issued a separate questionnaire to Fischer relating to the successor–in-interest issue. On April 11, 2005, Fischer submitted its response. Based on our analysis of this submission, we find that the company's organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Furthermore, Fischer has provided sufficient documentation of its name change. Based on all the evidence reviewed, we find that Fischer operates as the same business entity as Citrosuco. Thus, we find that Fischer is the successor–in-interest to Citrosuco and, as a consequence, its exports of FCOJM are subject to this proceeding. For further discussion, see the August 16, 2005, memorandum to Joseph A. Spetrini, Acting Assistant Secretary, from Barbara E. Tillman, Acting Deputy Assistant Secretary, entitled, ''Successor–In-Interest Determination for Fischer S.A. Agroindustria in the Less–Than-Fair–Value Investigation on Certain Orange Juice from Brazil.''

Regarding Frutesp and Frutropic, these entities were purchased by the Louis Dreyfus group in the early 1990's and they are now producing and exporting FCOJM under the name COINBRA–Frutesp. Because the corporate structure changes for these companies are not recent and involve complex transactions, additional consideration is required to determine their successor–in-interest status. Accordingly, we intend to make our successor–in-interest findings no later than the final determination.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments no later than April 1, 2005. (*See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice* at 70 FR 7234.)

As noted in the ''Background'' section above, on March 31, 2005, the petitioners requested that the Department clarify the scope of the investigation to include exports of FCOJM from producers and exporters previously covered by a separate antidumping duty order on FCOJ from Brazil. We received additional comments from the following interested parties on this issue: Citrovita Agro Industrial Ltda. (Citrovita), COINBRA–Frutesp, Cutrale, Louis Dreyfus Citrus, Inc., and Montecitrus. On June 27, 2005, we notified the petitioners that in order for the Department to consider revising the scope of the instant investigation as requested, the petitioners would need to

[2] At the time of this company's revocation, this company was doing business under the name Citrosuco Paulista S.A. (Citrosuco). See the ''Successor-in-Interest'' section of this notice, below, for further discussion.

amend the original petition. Because the petitioners have not submitted such an amendment, we have continued to define the scope of this investigation as initiated.

On April 1, 2005, Cutrale agreed with the Department's initial treatment of FCOJM and NFC as a single class or kind of merchandise.

On May 10, 2005, U.S. Customs and Border Protection (CBP) raised concerns that the scope as currently drafted could encompass merchandise other than FCOJM and NFC, under the HTSUS subheadings for reconstituted juice and non–orange juice products ''other'' (*i.e.*, 2009.12.45 and 2009.19.00). Therefore, CBP recommended removing these HTSUS subheadings from the scope of the instant investigation. *See* the May 10, 2005, memorandum to the file, from Jill Pollack, Analyst, entitled: ''Conversation with Customs Official Regarding the Harmonized Tariff Schedule (HTS) Codes Included in the Scope of the Antidumping Duty Investigation of Certain Orange Juice from Brazil (A–351–840).'' On May 31, 2005, the petitioners opposed this request on the grounds that both of the HTSUS subheadings cover orange juice products that lack specific HTSUS numbers, but which are included in the written description of the scope. Therefore, the petitioners maintain these subheadings should be retained in order to alleviate circumvention concerns. After considering the petitioners' comments, we find that it is appropriate to continue to include the HTSUS subheadings in question in the scope description set forth above.

Use of Facts Available (FA) for Montecitrus

One of the mandatory respondents in this case, Montecitrus, notified the Department on May 9, 2005, that it no longer intended to participate in the investigation. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

In the instant investigation, by withdrawing its information from the record, the Department preliminarily finds that, pursuant to section 776(a)(2)(A), Montecitrus withheld requested information. Further, pursuant to section 776(a)(2)(B), the Department preliminarily determines Montecitrus failed to provide the information requested by the Department within the established deadlines. Finally, by withdrawing from the investigation and ceasing to participate in the proceeding, the Department preliminarily finds that, pursuant to section 776(a)(2)(C), Montecitrus significantly impeded the investigation. Consequently, pursuant to sections 776(a)(2)(A)-(C) of the Act, the Department preliminarily finds that the application of facts available is warranted.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000). In the instant investigation, by ceasing to participate in the investigation, Montecitrus decided not to cooperate and thus did not act to the best of its ability to comply with a request for information. Consequently, we find that an adverse inference is warranted in determining an antidumping duty margin for Montecitrus.

Sections 776(b) and (c) of the Act authorize the Department to use, as adverse facts available (AFA), information derived from the petition, a final investigation determination, a previous administrative review, or any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792 (Aug. 30, 2002); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909 (Feb. 23, 1998). The Department applies AFA ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1, at 870 (1994) (SAA).

In accordance with our standard practice, as AFA, we are assigning Montecitrus a rate which is the higher of: (1) The highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin); or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Sweden*, 70 FR 28278 (May 17, 2005). In this case, the preliminary AFA margin is 60.29 percent, which is the highest margin stated in the notice of initiation. *See Initiation Notice*, 70 FR at 7236. We find that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, to encourage participation in future segments of this proceeding).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, or any other information placed on the record. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* 19 CFR 351.308 (c) and (d); *see also* the SAA at 870.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we used information submitted by the two participating respondents (*i.e.*, Cutrale and Fischer) in their questionnaire responses on the record of this investigation. We reviewed the adequacy and accuracy of the information in the petition during our pre–initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see* the February 7, 2005, Initiation Checklist). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and constructed value (CV) calculation on which the highest margin in the petition was based.

In order to corroborate the petition's EP calculation, we compared the PIERS data for FCOJM provided by the petitioners in their February 3, 2005, petition supplement to the prices of FCOJM reported by Cutrale and Fischer. These prices are comparable to the PIERS data reported by the petitioners, thus corroborating the petition U.S. price data. In addition, the petitioners calculated a net U.S. price by deducting foreign inland freight and insurance, brokerage, handling, and port charges from the PIERS data used to derive U.S. price. We corroborated these expense amounts by comparing them to the expenses reported by Cutrale and Fischer in their questionnaire responses. In order to corroborate the petitioners' CV calculation, we compared the petitioners' CV data for FCOJM, as adjusted in the notice of initiation, to the CV data reported by the respondents for FCOJM. As discussed in the August 16, 2005, memorandum to the file from Nichole Zink, Analyst, entitled, ''Corroboration of Data Contained in the Petition for Assigning Facts Available Rates'' (Corroboration Memo), we find that the figure used by the petitioners is comparable to the information reported by Cutrale and Fischer, thus corroborating the petition cost data. Therefore, we preliminarily determine that the petition EP and CV information has probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 60.29 percent, is corroborated within the meaning of section 776(c) of the Act. For further discussion, see the Corroboration Memo.

Fair Value Comparisons

To determine whether sales of certain orange juice from Brazil to the United States were made at LTFV, we compared the constructed export price (CEP) to the normal value (NV), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted–average CEPs to POI weighted–average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Cutrale and Fischer in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: product type and organic designation. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using CV.

Constructed Export Price

A. *Cutrale*

In accordance with section 772(b) of the Act, we calculate CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's U.S. sales as CEP sales because they were made in the United States by Cutrale's U.S. affiliates on behalf of Cutrale, within the meaning of section 772(b) of the Act. We excluded certain U.S. sales made pursuant to futures contracts from our analysis including: 1) sales to the New York Board of Trade (NYBOT) that have not been shipped as of the date of the preliminary determination because the country of origin of the merchandise is not yet known; and 2) sales that were destined for Canada.

For sales made pursuant to futures contracts, we are considering using as date of sale the date of the ''sell'' contract which resulted in the delivery of merchandise. However, although Cutrale reported the date of these ''sell'' contracts in its most recent U.S. sales listing, this information was not received in time for use in the preliminary determination. For purposes of this preliminary determination, as date of sale, we used the date the futures contract was either: 1) noticed for delivery to the NYBOT, in the case of sales to the NYBOT; or 2) the date the NYBOT was notified that certain futures contracts were to be applied in an ''exchange for physicals'' transaction. We intend to further examine the issue of the appropriate date of sale for futures contracts for the final determination. In accordance with our practice, for all other CEP sales, we used the earlier of shipment date from the U.S. affiliate to the customer or the U.S. affiliate's invoice date as the date of sale because these were the dates on which the material terms of sale were finalized. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying ''Issues and Decision Memorandum'' at *Comment 2*.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported gross unit price (*i.e.*, the notice price) to include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. All other gains and losses related to futures trading activities have been included in indirect selling expenses (*see* discussion on indirect selling expenses below). Where appropriate, we made adjustments for billing adjustments and early payment discounts.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from port to warehouse), and U.S. warehousing expenses. Regarding U.S. customs duties, Cutrale reported that it received certain ''drawback'' amounts associated with duties paid on U.S. sales and subsequently refunded under a U.S. duty drawback program. However, because Cutrale has provided an insufficient link between the amount of U.S. duties paid and the duty drawback received, we disallowed the ''drawback'' amounts reported by Cutrale for the preliminary determination. We have requested

additional information from Cutrale regarding this program and will consider it in our final determination.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, commissions, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs, gains and losses on ''rolled over'' futures contracts, and other indirect selling expenses). In instances where the information reported in Cutrale's sales listing differed from that reflected in its narrative, we relied on the narrative information. For further discussion, see the August 16, 2005, memorandum to the file, from Jill Pollack entitled, ''Calculations performed for Sucocitrico Cutrale Ltda. in the Investigation of Certain Orange Juice from Brazil'' (Cutrale calculation memo).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales.

B. *Fischer*

In accordance with section 772(b) of the Act, we calculate CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Fischer's U.S. sales as CEP sales because they were made in the United States by Fischer's U.S. affiliate on behalf of Fischer, within the meaning of section 772(b) of the Act. We preliminarily determine that invoice date is the appropriate date of sale because that is the date that the material terms of sale are agreed upon. *See* 19 CFR 351.401(i).

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight expenses, bunker fuel surcharges, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from port to warehouse or to customer), and U.S. warehousing expenses. Regarding U.S. customs duties, Fischer also reported that it received certain ''drawback'' amounts related to U.S. sales. However, because Fischer has provided an insufficient link between the amount of U.S. duties paid and the duty drawback received, we disallowed the ''drawback'' amounts reported by Fischer for the preliminary determination. We have requested additional information from Fischer regarding the U.S. duty drawback program and will consider it for the final determination.

In accordance with section 772(d)(1) and (2) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, further manufacturing, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We recalculated Fischer's U.S. credit expenses using the average interest rate reported by Fischer in its July 22 response. Regarding inventory carrying costs, Fischer did not report these expenses in its U.S. sales listing. Therefore, we calculated these expenses using FA. As FA, we based Fischer's inventory carrying period on the information contained in the public version of Cutrale's section C response. Finally, in instances where the information reported in Fischer's sales listing differed from that reflected in its narrative, we relied on the narrative information. For further discussion, see the August 16, 2005, memorandum to the file from Elizabeth Eastwood entitled, ''Calculations performed for Fischer S/A - Agroindustria in the Investigation of Certain Orange Juice from Brazil'' (Fischer calculation memo).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Fischer and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

B. *Affiliated Party Transactions and Arm's–Length Test*

As noted below, Fischer made sales of the foreign like product to affiliated customers during the POI. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (Nov. 15, 2002).

C. *Level of Trade*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of

the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

In this investigation, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company–specific LOT findings are summarized below.

Cutrale claimed that it made home market sales at only one LOT (*i.e.*, sales to original equipment manufacturers). Because Cutrale performed the same selling activities for sales to all customers in the home market (*i.e.*, engineering services, packing, inventory maintenance, processing, technical assistance, rebates, cash discounts, guarantees, freight and delivery, and post–sale warehousing), we determine that all home market sales by Cutrale were at the same LOT.

Fischer also claimed that it made home market sales at one LOT, although it reported home market sales to the following customer categories: reconstitutors and/or repackagers, institutional food service providers, and drink producers. Because Fischer performed the same selling activities for sales to all customers in the home market (*i.e.*, inventory maintenance, order processing/invoicing, freight and delivery arrangements, and receipt of payment), we also determine that all home market sales by Fischer were at the same LOT.

Both respondents made only CEP sales during the POI. In order to determine whether NV was established at an LOT which constituted a more advanced stage of distribution than the LOT of the CEP for these companies, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that both respondents performed essentially the same selling functions in their sales offices in Brazil for both home market and U.S. sales. Therefore, the respondents' sales in Brazil were not at a more advanced stage of marketing and distribution than the constructed U.S. LOT, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in LOT exists between markets, we find that neither an LOT adjustment nor a CEP offset is warranted for either Cutrale or Fischer.

D. *Cost of Production Analysis*

Based on our analysis of the petitioners' allegations, we found that there were reasonable grounds to believe or suspect that Cutrale's and Fischer's sales of certain orange juice in the home market were made at prices below their respective COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales–below-cost investigations to determine whether Cutrale's and Fischer's sales were made at prices below their respective COPs. *See* the Cutrale Cost Initiation Memo, and the Fischer Cost Initiation Memo.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for SG&A, and interest expenses. *See* ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses. We relied on the COP data submitted by Cutrale and Fischer except in the following instances.

A. *Cutrale*

1. We revised the allocation of Cutrale's net by–product revenue between FCOJM and NFC; and
2. We revised Cutrale's general and administrative (G&A) expense to include a write–off of fixed assets and a gain on the sale of fixed assets.

For further discussion of these adjustments, see the memorandums from Ji Young Oh and Laurens van Houten to Neal Halper entitled ''Cost of Production and Constructed Value Adjustments for the Preliminary Determination - Sucocitrico Cutrale Ltda.'' dated August 16, 2005.

B. *Fischer*

1. We revised the per–unit reported costs for NFC and FCOJM to reflect the different brix levels between products;
2. We revised Fischer's G&A expense rate calculation to exclude packing and freight from the cost of goods sold denominator; and
3. We based the COP for one of Fischer's production facilities on AFA. As AFA, we have relied on the costs recorded in the affiliate's trial balance for the applicable months. *See* below for further discussion.

For further details regarding these adjustments, see the Memorandum from Heidi Schriefer and Frederick Mines to Neal M. Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Fischer S/A - Agroindustria'' dated August 16, 2005.

As noted above, in its original section A and D responses, Fischer stated that it owned and operated three production facilities that produced the merchandise under consideration. In the supplemental section A response, Fischer stated that one of the three facilities was actually leased from an affiliated party. Subsequently, in its supplemental section D response, Fischer stated that its previous representations were erroneous and that there were actually no leased facilities. Instead, Fischer claimed that the third facility was wholly owned and operated by its affiliate during three months of the POI and the affiliate produced the merchandise under consideration. We reviewed the record evidence and determined that: (1) These two producers are affiliated under section 771(33)(E) of the Act; and 2) Fischer and its affiliate should be treated as one entity for dumping calculation purposes under 19 CFR 351.401(f). Specifically, both entities have production facilities for similar or identical products that would not require substantial retooling of either facility to restructure manufacturing priorities and there is significant potential for the manipulation of price or production. Thus, Fischer and its affiliate should be treated as one entity for purposes of this investigation. However, as noted above, the respondent failed to provide the costs associated with the third production facility.

Section 776(a) of the Act provides that, (1) if necessary information is not available on the record, or (2) if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. As noted above, in selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to

comply with a request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000).

In the instant case, Fischer stated in its questionnaire response that it owned and operated three production facilities that produced the merchandise under consideration, indicating that the cost of producing merchandise under consideration for all three facilities was included in the reported costs. However, as mentioned earlier, in the supplemental questionnaire, we discovered that Fischer did not in fact operate one of the three manufacturing facilities but rather that its affiliate operated the facility. Fischer failed to provide the COP related to this facility. As a result, necessary information is not available on the record and Fischer withheld information requested by the Department, warranting the application of facts available pursuant to sections 776(a)(1) and (2)(A) of the Act. Moreover, we preliminarily determine that Fischer did not cooperate to the best of its ability in failing to provide this cost information. Based on the data Fischer was able to provide with respect to this affiliate, it is reasonable to assume that Fischer has access to this affiliate's COP data and could have provided it in response to the Department's requests. However, Fischer failed to do so. Furthermore, Fischer should have known that the affiliate's COP information was required by the Department because it was requested in the general instructions for the Department's antidumping questionnaire. Therefore, to account for the POI production costs related to the affiliate's cost of producing merchandise under consideration, we applied AFA for purposes of the preliminary determination pursuant to section 776(b) of the Act. As AFA, for the per–unit costs of the third facility, we have relied on the costs recorded in the affiliate's trial balance for the applicable months. Subsequent to this preliminary determination, the Department will solicit further information related to the affiliate's cost of producing the merchandise under consideration. However, if the solicited information is not provided, the Department may make additional adverse inferences related to the total reported cost of production for purposes of the final determination.

2. Test of Home Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than its COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below–cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for Cutrale, less than 20 percent of Cutrale's home market sales failed the cost test. Therefore, we did not disregard any home market sales when calculating Cutrale's NV. Regarding Fischer, we found that, for certain specific products, more than 20 percent of Fischer's home market sales during the POI were at prices less than the COP and, in addition, the below–cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining Fischer's NV, in accordance with section 773(b)(1) of the Act. Where there were no sales of any comparable product at prices above the COP, we used CV as the basis for determining NV.

E. *Calculation of Normal Value Based on Comparison Market Prices*

1. *Cutrale*

For Cutrale, we calculated NV based on ex–factory prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for Brazilian taxes and billing adjustments in accordance with section 773(a)(6)(B)(iii) of the Act. We made no adjustment to the starting price for home market rebates for purposes of the preliminary determination because the amounts reported were provisional. Nonetheless, we have requested further information from Cutrale regarding the payment of these rebates and will consider it for the final determination.

We made deductions from the starting price for home market credit expenses (offset by interest revenue) pursuant to section 773(a)(6)(C) of the Act. Because Cutrale reported that it had no home market borrowings during the POI, we recalculated home market credit expenses using the SELIC interest rate published by the International Monetary Fund's *International Financial Statistics* (*i.e.*, the ''SELIC'' rate). Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

Finally, we deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

2. *Fischer*

We reclassified certain of Fischer's reported sales to unaffiliated parties as sales to an affiliate because Fischer had an ownership interest in this customer during the POI.

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments, where appropriate, to the starting price for Brazilian taxes in accordance with section 773(a)(6)(B)(iii) of the Act. We deducted foreign inland freight expenses in accordance with section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions under section 773(a)(6)(C) of the Act for credit expenses (offset by interest revenue). We recalculated home market credit expenses using the ''SELIC'' rate because Fischer did not report home market borrowings during the POI.

Finally, we deducted home market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. Regarding sales packed by an affiliated party, we disallowed those packing expenses for purposes of our price–to-price comparisons because Fischer failed to demonstrate that these packing expenses were at arm's length.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Critical Circumstances

On July 25, 2005, the petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of certain orange juice from Brazil. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted their critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined: (1) the evidence presented in the petitioners' submission of July 25; (2) information obtained from the USITC Interactive Tariff and Trade DataWeb (USITC dataweb); and (3) the ITC preliminary injury determination.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (Nov. 27, 2000). With regard to imports of certain orange juice from Brazil, the petitioners make no specific mention of a history of dumping for Brazil. We are not aware of any antidumping order in any country on certain orange juice from Brazil. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Brazil pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales, or 15 percent or more for CEP transactions, sufficient to impute knowledge of dumping. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (Oct. 19, 2001). Each respondent reported only CEP sales. The preliminary dumping margins calculated for Cutrale and Fischer are greater than 15 percent. Based on the ITC's preliminary determination of material injury, and the preliminary dumping margins calculated for all respondents, we find there is a reasonable basis to impute, to importers, knowledge of dumping and likely injury. *See* the August 16, 2005, memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary, from Louis Apple, Director, entitled, ''Antidumping Duty Investigation of Certain Orange Juice from Brazil - Affirmative Preliminary Determination of Critical Circumstances'' (Critical Circumstances Memo) at Attachment II.

For Montecitrus, we have used AFA in the critical circumstances analysis. As AFA in this case, we assigned Montecitrus the highest margin stated in the notice of initiation, 60.29 percent, which exceeds the 15 percent threshold necessary to impute knowledge of dumping. Consequently, we have imputed knowledge of dumping with regard to Montecitrus.

Regarding the companies subject to the ''All Others'' rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (Mar. 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the ''All Others'' rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the ''All Others'' rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the ''All Others'' category for the antidumping investigation of certain orange juice from Brazil.

The dumping margin for the ''All Others'' category in the instant case, 27.16 percent, exceeds the 15–percent threshold necessary to impute knowledge of dumping. Therefore, we find there is a reasonable basis to impute, to importers, knowledge of dumping for the companies covered by the ''All Others'' rate. Consequently, we find that knowledge of dumping exists with regard to the companies subject to the ''All Others'' rate.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes

of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.*, the ''comparison period''). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

The Department requested and obtained from Cutrale and Fischer monthly shipment data from June 2001 through June 2005. However, because this information was received too close to the date of the preliminary determination, we were unable to consider it for the preliminary determination. Instead, we relied on U.S. import data from the USITC DataWeb for imports through May 2005 (*i.e.*, the latest month for which complete data exists at the time of the preliminary determination). According to these statistics, we found the volume of imports of certain orange juice increased by more than 15 percent. We analyzed the time series data for the three years prior to the filing of the petition to address the issue of seasonality and found no seasonal pattern. As a result, we find that imports of subject merchandise were massive in the comparison period. For further discussion of this analysis, see the Critical Circumstances Memo at Attachments I and III.

In summary, we find that Cutrale, Fischer, Montecitrus, and the companies subject to the ''All Others'' rate satisfy the imputed knowledge of injurious dumping criterion under section 733(e)(1)(A)(ii) of the Act and the massive imports criterion in accordance with section 733(e)(1)(B) of the Act. Given the analysis summarized above, and described in more detail in the Critical Circumstances Memo, we preliminarily determine that critical circumstances exist for imports of certain orange juice produced in and exported from Brazil.

We will make a final determination concerning critical circumstances for all producers and exporters of subject merchandise from Brazil when we make our final dumping determination in this investigation, which will be 135 days after publication of the preliminary dumping determination.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(e)(2)(A) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the NV exceeds CEP, as indicated in the chart below. The weighted–average dumping margins are as follows:

Exporter/Manufacturer	Weighted–Average Margin Percentage	Critical Circumstances
Cutrale	24.62	Yes
Fischer	31.04	Yes
Montecitrus	60.29	Yes
All Others	27.16	Yes

The ''All Others'' rate is calculated exclusive of all *de minimis* margins and margins based entirely on adverse facts available.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports materially injure, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: 1) the party's name, address, and telephone number; 2) the number of participants; and 3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: August 16, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4633 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2003, through January 31, 2004. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India covering the period February 1, 2003, through January 31, 2004. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 10977 (March 7, 2005). On June 1, 2005, the Department published in the **Federal Register** an extension of the time limit for the final results in the antidumping duty review to no later than August 25, 2005, in accordance with the Tariff Act of 1930, as amended (''the Act''). *See Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 70 FR 31425 (June 1, 2005).

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

On July 29, 2005, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL–CIO/CLC) (collectively, the ''petitioners''), timely filed a case brief for the Department's final results of the administrative review. In order to allow sufficient time for the Department to analyze the complex arguments contained in the petitioners' case brief, we find that it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by August 25, 2005). Accordingly, the Department is extending the time limit for completion of the final results to no later than September 6, 2005, in accordance with section 751(a)(3)(A) of the Act.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: August 18, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4631 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On August 18, 2005, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively ''Mexinox'') filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Five Year Review of the AD and CVD Order made by the International Trade Commission, respecting Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Korea, Mexico, Taiwan and the United Kingdom. The determination was published in the **Federal Register** (70 Fed. Reg. 41236) on July 18, 2005 The NAFTA Secretariat has assigned Case Number USA–MEX–2005–1904–06 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on August 18, 2005, requesting panel review of the determination and order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 16, 2005);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 3, 2005); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the

investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 18, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 05–16769 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030905A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for an incidental take authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Minerals Management Service (MMS), for authorization to harass small numbers of marine mammals incidental to explosive severance activities at offshore oil and gas structures in the Gulf of Mexico (GOM) outer continental shelf (OCS). As a result of this request, NMFS is considering whether to promulgate rulemaking, that if implemented, would govern the incidental taking of marine mammals under individual Letters of Authorization (LOAs) issued to participants in this industry to take marine mammals by Level A and Level B harassment. In order to promulgate regulations and issue LOAs thereunder, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on MMS' application, and suggestions on the content of the regulations.

DATES: Comments and information must be received no later than September 23, 2005.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.030905A@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

A copy of MMS' Programmatic Environmental Assessment (PEA) is available on-line at:*http://www.gomr.mms.gov/homepg/regulate/environ/nepa/2005–013.pdf*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

An authorization may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which

(i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On February 28, 2005, NMFS received an application from MMS (MMS, 2005a) requesting, on behalf of the offshore oil and gas industry, authorization under section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) to harass marine mammals incidental to explosive severance activities at offshore oil and gas structures in the GOM OCS.

Description of the Activity

During exploration, development, and production operations for mineral extraction in the GOM OCS, the seafloor around activity areas becomes the repository of temporary and permanent equipment and structures. In compliance with OCS Lands Act (OCSLA) regulations and MMS guidelines, operators are required to remove or ''decommission'' seafloor obstructions from their leases within one year of lease termination or after a structure has been deemed obsolete or unusable. To accomplish these removals, a host of activities is required to (1) mobilize necessary equipment and service vessels, (2) prepare the decommissioning targets (e.g., piles, jackets, conductors, bracings, wells, pipelines, etc.), (3) sever the target from the seabed and/or sever it into manageable components, (4) salvage the severed portion(s), and (5) conduct final site-clearance verification work.

There are two primary methodologies used in the GOM for cutting decommissioning targets; nonexplosive and explosive severance. Nonexplosive methods include abrasive cutters (sand and abrasive-water jets), mechanical cutters (e.g., carbide or rotary), diamond wire cutting devices, and cutting facilitated by commercial divers using arc/gas torches. Though relatively time-consuming and potentially harmful to human health and safety (primarily for diver severances), nonexplosive-severance activities have little or no impact on the marine environment and would not result in an incidental take of marine mammals (MMS, 2005b-Programmatic Environmental Assessment (PEA)). A description of non-explosive severing tools and methods can be found in MMS' application and the PEA (section 1.4.7.1)(see **ADDRESSES**).

Explosive-severance activities use specialized charges to achieve target severance. Severance charges can be deployed on multiple targets and detonated nearly-simultaneously (i.e., staggered at an interval of 900 msec) effecting rapid severances. Coupled with safe-handling practices, the

reduced ''exposure time'' and omission of diver cutting also makes explosive severance safer for offshore workers. However, since the underwater detonation of cutting charges generates damaging pressure waves and acoustic energy, explosive-severance activities have the potential to result in an incidental take of nearby marine mammals. For this reason, MMS has requested an incidental take authorization governing explosive-severance activities that could be conducted under OCSLA structure decommissionings. Decommissioning operations conducted under OCSLA authority can occur on any day of a given year. Operators often schedule most of their decommissionings from June to December (approximately 80 percent) to take advantage of the often calm seas and good weather and the time period when structure installations tend to decrease since both commissioning and decommissioning operations compete for the same management groups, equipment, vessels, and labor force (TSB and CES, LSU, 2004).

Depending upon the target, a complete decommissioning operation may span several days or weeks; however, the explosive-severance activity or ''detonation event'' for most removal targets (even those with multiple severances) last for only several seconds because of charge staggering. For complex targets or in instances where the initial explosive-severance attempts are unsuccessful, more than one detonation event may be necessary per decommissioning operation. Even though hours or days may pass to allow for necessary mitigation measures and redeployment of new charges, each detonation event would similarly last only for a few seconds.

During the past 10 years (1994–2003), there has been an average of 156 platform decommissionings per year, with over 60 percent involving explosive-severance activities (see Table 4 in MMS (2005a)). In addition to historical activity averages, many of the older, nominally-producing structures in the mature GOM oil fields are nearing decommissioning age; this will result in an increase in removal operations in future years. Despite advancements in nonexplosive-severance methods and the additional requisite marine protected species mitigations, MMS expects explosive-severance activities to continue in at least 63 percent of all platform removals for the foreseeable future. (See Appendix A of MMS (2005b)) for additional forecasting information).

In addition to platform removals, based upon a review of the historical trends, industry projections, and recent forecast modeling, MMS estimates that between 170 and 273 explosive well-severance activities would occur annually over the next 5 years (see Table 7 in MMS, 2005a).

Description of Habitat and Marine Mammals Affected by the Activity

The proposed explosive severance activities could occur in all water depths of the offshore areas designated by MMS as the GOM Central and Western Planning Areas (CPA and WPA) and a portion of the Eastern Planning Area (EPA) offered under Lease Sale 181/189 (see Figure 2 or 3 in MMS, 2005a). Water depths in the areas of the proposed action range from 4 to 3,400 m (13–11,155 ft), with the majority of existing facilities and wells found within the CPA, concentrated on the upper shelf waters (greater than 200 m (656 ft) water depth) off of Louisiana. A detailed description of the northern GOM area and its associated marine mammals can be found in the MMS application and PEA and in a number of documents referenced in the application. Detailed information on the marine mammals in the GOM can also be found in the NMFS status of stocks reports (Waring et al., 2004) which is available for downloading or reading at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm182/*

A total of 21 cetacean species and one species of sirenian (West Indian manatee) are known to occur in the GOM. These species are the sperm whale, pygmy sperm whale, dwarf sperm whale, Cuvier's beaked whale, Sowerby's beaked whale (extralimital), Gervais' beaked whale, Blainville's beaked whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, Atlantic spotted dolphin, spinner dolphin, Clymene dolphin, striped dolphin, Fraser's dolphin, Risso's dolphin, melon-headed whale, pygmy killer whale, false killer whale, killer whale, short-finned pilot whale, North Atlantic right whale (extralimital), humpback whale (rare), minke whale (rare), Bryde's whale, sei whale (rare), fin whale (rare), and the blue whale (extralimital).

A description of the status, distribution, and seasonal distribution of the affected species and stocks of marine mammals that might be affected by explosive severance activities is provided in MMS' application.

Potential Impacts to Marine Mammals

Underwater explosions are the strongest manmade point sources of sound in the sea (Richardson *et al.*, 1995). The underwater pressure signature of a detonating explosion is composed of an initial shock wave, followed by a succession of oscillating bubble pulses (if the explosion is deep enough not to vent through the surface) (Richardson *et al.*, 1995). The shock wave is a compression wave that expands radially out from the detonation point of an explosion. Although the wave is initially supersonic, it is quickly reduced to a normal acoustic wave. The broadband source levels of charges weighing 0.5–20 kg (1.1–44 lb) are in the range of 267–280 dB re 1 microPa (at a nominal 1–m distance), with dominant frequencies below 50 Hz (Richardson *et al.*, 1995; CSA, 2004). The following sections discuss the potential impacts of underwater explosions on marine mammals, including mortality, injury, hearing effects, and behavioral effects.

Mortality or Injury

It has been demonstrated that nearby underwater blasts can injure or kill marine mammals (Richardson *et al.*, 1995). Injuries from high-velocity underwater explosions result from two factors: (1) The very rapid rise time of the shock wave; and (2) the negative pressure wave generated by the collapsing bubble, which is followed by a series of decreasing positive and negative pressure pulses (CSA, 2004). The extent of injury largely depends on the intensity of the shock wave and the size and depth of the animal (Yelverton *et al.*, 1973; Craig, 2001).

The greatest damage occurs at boundaries between tissues of different densities because different velocities are imparted that can lead to their physical disruption; effects are generally greatest at the gas-liquid interface (Landsberg, 2000; CSA, 2004). Gas-containing organs, especially the lungs and gastrointestinal tract, are the most susceptible to this type of damage. Lung injuries (including lacerations and the rupture of the alveoli and blood vessels) can lead to hemorrhage, air embolisms, and breathing difficulties. The lungs and other gas-containing organs (nasal sacs, larynx, pharynx, and trachea) may also be damaged by compression/expansion caused by oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, which may lead to hemorrhage and the release of gut contents. Less severe injuries include contusions, slight hemorrhaging, and petechia (Yelverton *et al.*, 1973; CSA, 2004). Ears are the organs most sensitive to pressure and, therefore, to injury (Ketten, 2000; CSA, 2004). Severe

damage to the ears can include rupture of the tympanic membrane, fracture of the ossicles, cochlear damage, hemorrhage, and cerebrospinal fluid leakage into the middle ear. By themselves, tympanic membrane rupture and blood in the middle ear can result in partial, permanent hearing loss. Permanent hearing loss can also occur when the hair cells are damaged by loud noises (ranging from single, very loud events to chronic exposure).

Hearing Effects

Mammalian hearing functions over a wide range of sound intensities, or loudness. The sensation of loudness increases approximately as the logarithm of sound intensity (Richardson and Malme, 1993). Sound intensity is usually expressed in decibels (dB), units for expressing the relative intensity of sounds on a logarithmic scale. Because sound pressure is easier to measure than intensity and intensity is proportional to the square of sound pressure, sound pressure level is usually reported in units of decibels relative to a standard reference pressure.

Temporary Threshold Shift

The mildest form of hearing damage, temporary threshold shift (TTS), is defined as the temporary elevation of the minimum hearing sensitivity threshold at particular frequency(s) (Kryter, 1985; CSA, 2004). TTS may last from minutes to days. Although few data exist on the effects of underwater sound on marine mammal hearing, in terrestrial mammals, and presumably in marine mammals, received levels must exceed an animal's hearing threshold (i.e., maximum sensitivity) for TTS to occur (Richardson *et al.*, 1995; Kastak *et al.*, 1999; Wartzok and Ketten, 1999).

Most studies involving marine mammals have measured exposure to noise in terms of sound pressure level (SPL), measured in dB_{rms} or dB_{peak} pressure re 1 microPa. Exposure to underwater sound can also be expressed in terms of energy, also called sound exposure level (SEL), or acoustic energy (measured in dB re 1 μPa^2–s), which considers both intensity and duration of the sound. There appears to be a linear relationship between energy and the level of TTS, with duration and frequency seemingly unimportant (CSA, 2004). If TTS is defined as a measurable threshold shift of 6 dB or more (Finneran *et al.*, 2000, 2002), the onset of TTS (for white whales and bottlenose dolphins) was associated with an energy level of about 184 dB re 1 μPa^2–s (CSA, 2004). However, the data are very limited, and Finneran (2003) has noted that they should be interpreted with caution (CSA, 2004).

Permanent Threshold Shift (PTS)

PTS is a permanent decrease in the functional sensitivity of an animal's hearing system at some or all frequencies (CSA, 2004). The principal factors involved in determining whether PTS will occur include sound impulse duration, peak amplitude, and rise time. The criteria are location and species-specific (Ketten, 1995) and are also influenced by the health of the receiver's ear.

At least in terrestrial animals, it has been demonstrated that the received level from a single exposure must be far above the TTS threshold for there to be a risk of PTS (Kryter, 1985, Richardson *et al.*, 1995; CSA, 2004). Sound signals with sharp rise times (e.g., from explosions) produce PTS at lower intensities than do other types of sound (Gisiner, 1998; CSA, 2004).

For explosives, Ketten (1995) estimated that greater than 50–percent PTS would occur at peak pressures of 237–248 dB re 1 microPa and that TTS would occur at 211–220 dB re 1 microPa. The ''safe'' peak pressure level to avoid physical injury recommended by Ketten (1995) is 100 psi (237 dB re 1 µPa, or about 212 dB re 1 μPa^2–s). PTS is assumed to occur at received levels 30 dB above TTS-inducing levels. Studies have shown that injuries at this level involve the loss of sensory hair cells (Ahroon *et al.*, 1996; CSA, 2004).

Behavioral Effects

Based on the information presented in Richardson et al. (1995), the possible behavioral effects of noise from underwater explosions on marine mammals may be categorized as follows:

(1)The noise may be too weak to be heard at the location of the animal (i.e., below the local ambient noise level, below the hearing threshold of the animal at the relevant frequencies, or both);

(2)The noise may be audible, but not loud enough to elicit an overt behavioral reaction;

(3)The noise may elicit behavioral reactions, which may vary from subtle effects on respiration or other behaviors (detectable only statistically) to active avoidance behavior;

(4)With repeated exposure, habituation (diminishing responsiveness) to the noise may occur. Continued disturbance effects are most likely with sounds that are highly variable in their characteristics, unpredictable in occurrence, and associated with situations perceived by the animal as threatening;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise.

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Behavioral reactions of marine mammals to sounds such as those produced by underwater explosives are difficult to predict. Whether and how an animal reacts to a given sound depends on factors such as the species, hearing acuity, state of maturity, experience, current activity, reproductive state, time of day, and weather. If a marine mammal reacts to a sound by changing its behavior or moving a short distance, the impacts may not be significant to the individual, stock, or species as a whole. However, if a sound displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts could be significant (CSA, 2004).

Richardson *et al.* (1995) summarized available information on the reported behavioral reactions of marine mammals to underwater explosions. Observations following the use of seal bombs as scare charges indicate that pinnipeds rapidly habituate to and, in general, appear quite tolerant of noise pulses from explosives. Klima *et al.* (1988) reported that small charges were not consistently effective in moving bottlenose dolphins away from blast sites in the GOM. Since

dolphins may be attracted to the fish killed by such a charge, rather than repelled, scare charges are not used in the GOM platform removal program (G. Gitschlag, personal communication, in Richardson *et al.*, 1995).

There are few data on the reactions of baleen whales to underwater explosions. Gray whales were apparently unaffected by 9– to 36–kg (20– to 97–lb) charges used for seismic exploration (Fitch and Young, 1948). However, Gilmore (1978) felt that similar underwater blasts within a few kilometers of the gray whale migration corridor did ''sometimes'' interrupt migration.

Humpback whales have generally not been observed to exhibit behavioral reactions (including vocal ones) to explosions, even when close enough to suffer injury (hearing or other) (Payne and McVay, 1971; Ketten *et al.*, 1993; Lien *et al.*, 1993; Ketten, 1995; Todd *et al.*, 1996). In Newfoundland, humpbacks displayed no overt reactions within about 2 km of 200– to 2,000–kg explosions. Whether habituation and/or hearing damage occurred was unknown, but at least two whales were injured (and probably killed) (Ketten *et al.*, 1993). Other humpback whales in Newfoundland, foraging in an area of explosive activity, showed little behavioral reaction to the detonations in terms of decreased residency, overall movements, or general behavior, although orientation ability appeared to be affected (Todd *et al.*, 1996). Todd *et al.* (1996) suggested caution in interpretation of the lack of visible reactions as indication that whales are not affected or harmed by an intense acoustic stimulus; both long- and short-term behavior as well as anatomical evidence should be examined. The researchers interpreted increased entrapment rate of humpback whales in nets as the whales being influenced by the long-term effects of exposure to deleterious levels of sound.

As mentioned previously, Finneran*et al.* (2000) exposed captive bottlenose dolphins and belugas to single, simulated sounds of distant explosions. The broad-band received levels were 155–206 dB; pulse durations were 5.4–13 ms. This was equivalent to a maximum spectral density of 102–142 dB re 1 μPa^2/Hz at a 6.1 Hz bandwidth. Although pulse durations differed, the source levels required to induce these reactions were similar to those found by Ridgway *et al.* (1997) and Schlundt *et al.* (2000).

Estimates of Take by Harassment During Explosive Severance Activities in the GOM

The MMS has requested NMFS to issue authorizations, under section 101(a)(5)(A) of the MMPA, to cover any potential take by Level A or Level B harassment for the 21 species of marine mammals listed previously in this document, incidental to the oil and gas industry conducting explosive-severance operations regulated by the MMS. Explosive severance operations have the potential to take marine mammals by contact with shock wave and acoustic energy released from underwater detonations and the resultant injury, hearing damage, and behavioral effects as defined by NMFS. For this activity, MMS has adopted, without modification, NMFS' take thresholds and criteria for explosives used in the incidental take authorization for shock trials for the U.S. Navy's *Winston Churchill* (USDON, 2001). While these criteria remain a subject for discussion (see 69 FR 21816, April 22, 2004), the *Churchill* criteria (12 pounds/in^2 (psi) peak-pressure and 182 dB (re 1 μPa^2–sec)) remain conservative because Finneran *et al.* (2003) did not find masked TTS in the single bottlenose dolphin tested at the highest exposure conditions: peak pressure of 207 kPa (30 psi), 228 dB re 1 microPa pk-pk pressure, and 188 dB re 1 $microPa^2$–s total energy flux.

The criteria for nonlethal, injurious impacts (Level A harassment) are currently defined as the incidence of 50–percent tympanic-membrane (TM) rupture and the onset of slight lung hemorrhage for a 12.2–kg (27 lb) dolphin calf. Level A harassment take is assumed to occur:

1. At an energy flux density value of 1.17 in-lb/in^2 (which is about 205 dB re 1 μPa^2–s); and

2. If the peak pressure exceeds 100 psi for an explosive source; i.e., the ''safe'' peak pressure level to avoid physical injury recommended by Ketten (1995).

The horizontal distance from the explosive to each threshold is determined and the maximum distance at which either is exceeded is considered to be the distance at which Level A harassment would occur (USDON, 2001).

NMFS recognizes two levels of noninjurious acoustical impacts (Level B harassment). One criterion for Level B harassment is defined by the onset of TTS. Two thresholds are applied. TTS is assumed to be induced:

1. At received energies greater than 182 dB re 1 μPa^2–s within any 1/3–octave band; and

2. If, for an explosive source, the peak pressure at the animal exceeds 12 psi.

As with Level A harassment, the horizontal distance to each threshold is determined and the maximum distance at which either is exceeded is considered the distance at which Level B harassment (TTS) would occur (USDON, 1998 and 2001; CSA, 2004).

Sub-TTS behavioral effects may also be considered to constitute a take by Level B harassment if a marine mammal reacts to an activity in a manner that would disrupt some behavioral pattern in a biologically significant way. NMFS does not believe that single, minor reactions (such as startle or ''heads-up'' alert displays, short-term changes in breathing rates, or modified single dive sequences) that have no biological context qualify as takes (66 FR 22450, May 4, 2001). This would include minor or momentary strictly behavioral responses to single events such as underwater explosions. Since explosive severance activities result in single, almost instantaneous detonations, with no repetitive detonations, NMFS does not believe that marine mammals would be subject to behavioral harassment other than behavioral modifications incurred as a result of TTS.

In order to obtain potential incidental-take numbers for explosive severance activities, fundamental modeling components require: (1) predictive modeling of detonation pressure/energy propagation, (2) propagation model verification and utilization, (3) predictive modeling of marine mammal take estimates, and (4) take-estimate calculation. These calculations are explained in detail in MMS' application and PEA.

Based on MMS calculations for all explosive severance scenarios, Level A harassment takes would be limited to less than one bottlenose dolphin and between three and five bottlenose dolphins, one Atlantic spotted, and one pantropical spotted dolphins over the five-year period of the proposed regulations.

Based on MMS calculations for all explosive severance scenarios, Level B harassment takes would be limited 148–227 bottlenose dolphins, 35–65 Atlantic spotted dolphins, 33–77 pantropical spotted dolphins, 11–27 Clymene dolphins, 8–12 rough-toothed dolphins, 6–14 striped dolphins, 6–15 melon-headed whales, 4–10 pilot whales, 2–5 spinner dolphins, 1–3 Risso's dolphins, and 1–2 sperm whales. It should be noted that these estimates are made without consideration of the implementation of mitigation measures to protect marine mammals, so actual harassment numbers would likely be

lower. Post-activity monitoring conducted by NMFS observers since about 1989 has not resulted in any sightings of distressed marine mammals.

Mitigation and Monitoring

Based upon the analysis found in the Structure-Removal PEA, MMS believes that implementation of the mitigation measures listed in this section will prevent any significant impacts from occurring.

Charge Criteria

The charge criteria discussed here (e.g., charge size, detonation staggering, and explosive material) are applicable for all of the explosive-severance scenarios conducted under the proposed action.

Charge Size

The options available under the multiple explosive-severance scenarios allow for the development of any size charge between 0 and 500 lb (226.8 kg). Most often determined in the early planning stages, the final/actual charge weight establishes the specific mitigation scenario that must be adhered to as a permit condition. However, increasing charge size results in increasing levels of mitigation/monitoring. Using explosives greater than 500 lb (226.8 kg) are not proposed to be authorized for taking marine mammals under the MMPA. Use of explosives greater than 500 lb (226.8 kg) would require additional National Environmental Policy Act (NEPA) analyses, Endangered Species Act (ESA) consultations and MMPA authorization prior to usage. As a result, no marine mammal takings will be authorized for charge weights greater than 500 lbs (226.8 kg).

Detonation Staggering

Multiple-charge detonations will be staggered at an interval of 0.9 sec (900 msec) between blasts to prevent an additive pressure event. For decommissioning purposes, a ''multiple-charge detonation'' refers to any configuration where more than one charge is required in a single detonation ''event.''

Explosive Material

There are many important properties (i.e., velocity, brisance, specific-energy, etc.) related to the explosive material(s) used in developing severance charges. Material needs vary widely depending upon target characteristics, marine conditions, and charge placement. Since specific material and personnel safety requirements must be established and followed, MMS believes that all decisions on explosive composition, configuration, and usage should be made by the qualified (i.e., licensed and permitted) explosive contractors in accordance with the applicable explosive-related laws and regulations.

Specific Mitigation/Monitoring Requirements

Explosive-severance activities, as described in the MMS application and PEA, have been grouped into five blasting categories (very small, small, standard, large, and specialty). Since the level of detonation pressure and energy is primarily related to the amount of the explosives used, these categories were developed cooperatively by MMS, NMFS and industry based upon the specific range of charge weights needed to conduct current and future GOM OCS decommissionings. Depending on the design of the target and other variable marine conditions, the severance charges developed under each of these categories could be designed for use in either a below-mudline (BML) or above mudline (AML) configuration. These factors, combined with an activity location within either the shelf (less than 200 m (656 ft)) or slope (greater than 200 m (656 ft)) species-delineation zone, result in 20 separate severance scenarios, as shown in Table 1.

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Table 1. Blasting Category Parameters and Associated Severance Scenario Numbers (MMS, 2005b)

Blasting Category	Charge Range	Configuration	Species-Delineation Zone	Scenario
Very-Small	0-10 lb	BML	Shelf (<200 m)	A1
		BML	Slope (>200 m)	A2
	0-5 lb	AML	Shelf (<200 m)	A3
		AML	Slope (>200 m)	A4
Small	>10-20 lb	BML	Shelf (<200 m)	B1
		BML	Slope (>200 m)	B2
	>5-10 lb	AML	Shelf (<200 m)	B3
		AML	Slope (>200 m)	B4
Standard	>20-80 lb	BML	Shelf (<200 m)	C1
		BML	Slope (>200 m)	C2
	>20-80 lb	AML	Shelf (<200 m)	C3
		AML	Slope (>200 m)	C4
Large	>80-200 lb	BML	Shelf (<200 m)	D1
		BML	Slope (>200 m)	D2
	>80-200 lb	AML	Shelf (<200 m)	D3
		AML	Slope (>200 m)	D4
Specialty	>200-500 lb	BML	Shelf (<200 m)	E1
		BML	Slope (>200 m)	E2
	>200-500 lb	AML	Shelf (<200 m)	E3
		AML	Slope (>200 m)	E4

The charge criteria listed previously will be standard for all decommissionings employing explosive-severance activities. However, depending upon the severance scenario, there are six different types of marine mammal/sea turtle monitoring surveys that could be conducted before and after all detonation events. The specific monitoring requirements, survey times, and impact zone radii for all explosive-severance scenarios are summarized in Table 2.

Table 2
Survey and Time Requisite Summary for All Explosive-Severance Scenarios

Blasting Category	Impact Zone Radius	Scenario	Pre-Det Surface Survey (min)	Pre-Det Aerial Survey (min)	Pre-Det Acoustic Survey (min)	Post-Det Surface Survey (min)	Post-Det Aerial Survey (min)	Post-Post-Det Aerial Survey (Yes/No)
Very Small	261 m (856 ft)	A1	60	N/A	N/A	30	N/A	No
		A2	90	N/A	N/A	30	N/A	No
	293 m (961 ft)	A3	60	N/A	N/A	30	N/A	No
		A4	90	N/A	N/A	30	N/A	No
Small	373 m (1,224 ft)	B1	90	30	N/A	N/A	30	No
		B2	90	30	N/A	N/A	30	No
	522 m (1,714 ft)	B3	90	30	N/A	N/A	30	No
		B4	90	30	N/A	N/A	30	No
Standard	631 m (2,069 ft)	C1	90	30	N/A	N/A	30	No
		C2	90	30	120	N/A	30	No
	829 m (2721 ft)	C3	90	45	N/A	N/A	30	No
		C4	90	60	150	N/A	30	Yes
Large	941 m (3,086 ft)	D1	120	45	N/A	N/A	30	No
		D2	120	60	180	N/A	30	Yes
	1,126m (3,693 ft)	D3	120	60	N/A	N/A	30	No
		D4	150	60	210	N/A	30	Yes
Specialty	1,500 m (4,916 ft)	E1	150	90	N/A	N/A	45	No
		E2	180	90	270	N/A	45	Yes
	1,528 m (5,012 ft)	E3	150	90	N/A	N/A	45	No
		E4	180	90	270	N/A	45	Yes

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Use of Table 2 is illustrated using the Standard Blasting Category for shelf and slope waters as an example:

Shelf Waters (<200 m): Scenarios C1 and C3

An operator proposing shelf-based, explosive-severance activities conducted under the standard blasting category will be limited to 80–lb charge sizes (BML or AML) and will be required to conduct all requisite monitoring during daylight hours out to the associated impact-zone radii listed here:

C1–631 m (2,069 ft)
C3–829 m (2,721 ft)

Required Observers

Generally, two NMFS observers are required to perform marine mammal/sea turtle detection surveys for standard-blasting under shelf scenarios C1 and C3. If necessary, the site coordinator will determine if additional observers are required to compensate for the complexity of severance activities and or structure configuration. In addition to meeting all reporting requirements, the NMFS observers will:

(1) Brief affected crew and severance contractors on the monitoring requirements and notify topsides personnel to immediately report any sighted marine mammal/sea turtles to the observer or company representative;

(2) Establish an active line of communication (i.e., 2–way radio, visual signals, etc.) with company and blasting personnel; and

(3) Devote the entire, uninterrupted survey time to marine mammal/sea turtle monitoring.

Pre-Detonation Monitoring

Before severance charge detonation, the NMFS observers will conduct a 90–min surface monitoring survey of the impact zone. The monitoring will be conducted from the highest vantage point available from either the decommissioning target or proximal surface vessels. Once the surface monitoring is complete (i.e., the impact zone cleared of marine mammal/sea turtles), one of the NMFS observers will transfer to a helicopter to conduct a 30–min (Scenario C1) or 45–min (Scenario C3) aerial monitoring survey. As per approved guidelines, the helicopter will transverse the impact zone at low speed/altitude in a specified grid pattern. If during the aerial survey a marine mammal/sea turtle is:

(1) Not sighted, proceed with the detonation;

(2) Sighted outbound and continuously tracked clearing the impact zone, proceed with the detonation after the monitoring time is complete to ensure no reentry;

(3) Sighted outbound and the marine mammal/sea turtle track is lost (e.g., the animal dives below the surface),

- Halt the detonation,
- Wait 30 min, and
- Reconduct the 30 min (C1) or 45 min (C3) aerial monitoring survey; or

(4) Sighted inbound,

- Halt the detonation,
- Wait 30 minutes, and
- Reconduct the 30–min (C1) or 45–min (C3) aerial monitoring survey.

Post-Detonation Monitoring

After severance charge detonation, the NMFS observer will conduct a 30–min aerial monitoring survey of the impact zone to look for impacted marine mammal/sea turtles. If a marine mammal/sea turtle is found shocked, seriously injured, or dead, the operations will cease, attempts will be made, under the direction of the NMFS observer, to collect/resuscitate the animal, and the Southeast Region, NMFS will be contacted for additional instruction. If no marine mammal/sea turtles are observed to be impacted by the detonation, the NMFS observer will record all of the necessary information as required in MMS's permit approval letter and guidelines for the preparation of a trip report.

If unforeseen conditions or events occur during a standard-blasting operation that may necessitate additional monitoring, the NMFS observer will contact the NMFS Platform Removal Observer Program (PROP) Coordinator in Galveston, TX and/or MMS for additional guidance. A flowchart of the monitoring process and associated survey times for standard severance-scenarios C1 and C3 is provided in Figure 6 in MMS, 2005a.

Slope Waters (>200 m): Scenarios C2 and C4

An operator proposing slope-based, explosive-severance activities conduced under the standard blasting category will be limited to 80–lb charge sizes (BML or AML) and conduct all requisite monitoring during daylight hours out to the associated impact-zone radii listed below:

C2–631 m (2,069 ft)
C4–829 m (2,721 ft)

Required Observers

Slope water scenarios propose to require a minimum of three NMFS observers for the coordinated surface, aerial, and acoustic monitoring surveys, therefore, at least two ''teams'' of observers will be required. The PROP Coordinator will determine each ''team'' size depending upon the complexity of severance activities and or structure configuration. In addition to meeting all reporting requirements, the NMFS observers would perform the same functions as the observers in the Shelf Water Scenarios C1 and C3.

Pre-Detonation Monitoring

Before severance charge detonation, NMFS observers will begin a 90–min surface monitoring survey and a 120–min (Scenario C2) or 150–min (Scenario C4) passive-acoustic monitoring survey of the impact zone. The surface monitoring will be conducted in the same manner as the C1 and C3 scenarios. Once the surface monitoring is complete (i.e., the impact zone cleared of marine mammal/sea turtles), the acoustic survey will continue while one of the NMFS observers transfers to a helicopter to conduct a 30–min (Scenario C2) or 60–min (Scenario C4) aerial monitoring survey. As per approved guidelines, the helicopter will transverse the impact zone at low speed/altitude in a specified grid pattern.

The proposed requirements on marine mammal and sea turtle sighting for the C1 and C3 scenarios would apply here except that the wait times and aeries survey times differ (see Table 2).

Post-Detonation Monitoring

Scenarios C2 and C4 both would require the same post-detonation monitoring explained for the C1 and C3 scenarios. , or

Scenario C4 also requires a post-post-detonation aerial monitoring survey to be conducted within 2–7 days after detonation activities conclude. Conducted by helicopter or fixed-wing aircraft, observations are to start at the removal site and proceed leeward and outward of wind and current movement. Any injured or killed marine mammal/sea turtle must be recorded, and if possible, tracked after notifying NMFS. If no marine mammal/sea turtles are observed to be impacted during either aerial survey, the NMFS observers will record all of the necessary information as detailed in MMS's permit approval letter and guidelines for the preparation of a trip report.

If unforeseen conditions or events occur during a standard-blasting operation that may necessitate additional monitoring, the NMFS observer will contact the coordinator and/or MMS for additional guidance. A flowchart of the monitoring process and associated survey times for standard severance- scenarios C2 and C4 is

provided in Figure 7 in the MMS application (MMS, 2005a).

Reporting Requirements

All explosive-severance activities in the GOM would be mandated to abide by the reporting requirements listed in this section. The information collected will be used by MMS and NMFS to continually assess mitigation effectiveness and the level of marine mammal/sea turtle impacts.

The reporting responsibilities will be undertaken by the NMFS' marine mammal/sea turtle observer for scenarios B1–E4 (Table 2) and the collected data will be prepared and routed in accordance with previously established guidelines for filing times and distribution.

For very-small blasting scenarios A1–A4, the company observer will be responsible for recording the data and preparing a trip report for submittal within 30–days of completion of the severance activities. Trip reports for scenarios A1–A4 will be sent to MMS and NMFS Gulf/Southeast regional offices.

In addition to basic operational data (i.e., area and block, water depth, company/platform information, etc.), the trip reports must contain all of the applicable information listed in Table 10 in MMS' application. In the event that a marine mammal or sea turtle is shocked, injured, or killed during the severance activities, the operations will cease and the observer will contact MMS and NMFS' Southeast Regional Office. If the animal does not revive, efforts should be made to recover it for necropsy in consultation with the appropriate NMFS' Stranding Coordinator.

Conclusions

MMS has concluded that impacts to marine mammals from explosive-severance activities conducted under the proposed action are potentially adverse but not significant. The projected Level A harassment takes are very unlikely and, would be limited to 3 species. No deaths or serious injuries to marine mammals or sea turtles are projected. If any marine mammals are displaced from preferred grounds, it will be for the short term, and no critical habitat is involved. Level B harassment takes may disrupt behavioral patterns in a few individuals of a few species, but no effect is projected on annual recruitment or survival. With proposed mitigation measures in place, the potential impacts on marine mammals are expected to be negligible.

ESA

Under section 7 of the ESA, MMS has begun consultation on the proposed explosive severance activtiy. NMFS will also consult on the issuance of regulations and LOAs under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of regulations.

NEPA

MMS completed and released its PEA to the public on February 28, 2005. That document is available for review (see **ADDRESSES**).

NMFS is reviewing the PEA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of regulations and LOAs for this activity.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**). NMFS requests commenters also read the MMS application and PEA on this action prior to submitting comments.

Dated: August 18, 2005.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–16843 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081905A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting in September, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, September 13 through Thursday, September 15, 2005, beginning at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Holiday Inn Express, 110 Middle Street High Street, Fairhaven, MA; telephone: (508) 997–1281.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, September 13, 2005

Following introductions, the Council will review and approve a revised policy concerning the election of new officers and conduct elections for 2005–06 officers. Reports will follow from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. There also will be an update on the New England Fleet Visioning Project. During the morning session, the Council also will receive a briefing on a proposed rule that will address issues related to the management of Atlantic tunas, swordfish, shark and billfish fisheries. The Magnuson-Stevens Act Committee will provide recommendations for Council approval concerning positions on changes to the Act. The remainder the day will be spent on habitat and ecosystem-related issues. There will be a summary of the most recent activities currently underway and associated with development of essential fish habitat (EFH) Omnibus Amendment 2, as well as consideration and approval of a Council policy on Marine Protected Areas. There also will be an update on the Habitat/Marine Protected Area (MPA)/Ecosystem Committee's progress to develop and recommend alternatives for Habitat Areas of Particular Concern in the EFH Omnibus Amendment. The day will conclude with a report on jurisdictional issues related to wind farm, liquified natural gas and aquaculture projects in the Northeast and an update on the Council's ecosystem project.

Wednesday, September 14, 2005

During the Wednesday morning session, the Council receive a presentation on the Data Quality Act. This will be followed by an open public comment period to address items not listed on the agenda. The Scallop Committee will then present its recommendations for measures to be included in Framework Adjustment 18 to the Sea Scallop Fishery Management

Plan (FMP). The Council will consider alternatives and provide final approval on issues related to area rotation, specifications for trip and days-at-sea allocations in 2006 and 2007, a streamlined procedure to adjust the Elephant Trunk Area and open area allocations in 2007, the general category scallop fishery, crew size limits on controlled area access trips and a new bycatch data collection and monitoring program. Also included will be changes in controlled access area trip exchanges, the broken trip limit exemption program and the research set-aside program. Consideration of Framework Adjustment 18 is likely to take most of the day on Wednesday.

Thursday, September 15, 2005

There will be a presentation of the assessment summary from the 41st Northeast Regional Stock Assessment Workshop. Species to be addressed include summer flounder, bluefish and tilefish. This will be followed by a report on a video monitoring pilot study that explores alternative means to supplement and complement observer activities on fishing vessels. The Council also will discuss and consider establishing a control date for party and charter boats in the multispecies fishery, as recommended by the its Recreational Fishing Advisory Panel. During the remainder of the day the Council will take further action on Framework Adjustment 42 to the Northeast Multispecies FMP by identifying additional measures to be analyzed and further considered in the action. These will include the Category B (regular) days-at-sea pilot program, a formal rebuilding program for Georges Bank yellowtail flounder with associated measures, a standardized bycatch reporting methodology, and possible modifications to the rolling closures now in effect to reduce groundfish fishing mortality. The Transboundary Management Guidance Committee is scheduled to ask for approval of its recommendations for the 2006 total allowable catches for cod, haddock and yellowtail flounder in a specific area of Georges Bank that is governed by the U.S./Canada Resource Sharing Understanding. Prior to addressing any other outstanding business, the Council will consider and possibly approve retaining the 2005 herring specifications through the 2006 fishing year.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 19, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4630 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080205C]

Endangered Species; File No. 1527

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the John A. Musick, Ph.D., Virginia Institute of Marine Science (VIMS), Gloucester Point, VA 23062, has applied in due form for a permit to take loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 23, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281–9328; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1527.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Shane Guan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The purpose of the proposed research is to study loggerhead, Kemp's ridley, leatherback, green, and hawksbill sea turtles in the waters of the Chesapeake Bay (Bay), and the Virginia (VA) and Maryland (MD) tributaries to the Bay to identify relative abundance over time; detect changes in sea turtle size and age composition; monitor and document movement and migration patterns; and to study sea turtle interactions with whelk pot gear. The applicant proposes to take up to 100 loggerhead, 30 Kemp's ridley, 10 leatherback, 10 green, and 5 hawksbill sea turtles each year over the course of a 5-year permit. Of the 100 loggerhead turtles taken annually, 74 would be taken in VA waters, and the remaining 26 would be taken in MD waters. Likewise, the numbers by state of the other species are: 22 Kemp's ridleys from VA and 8 from MD; 7 leatherbacks from VA and 3 from MD; 7 greens from VA and 3 from MD; and 3 hawksbills from VA and 2 from MD. Seventy-one of the loggerhead, 21 of the Kemp's ridley, 7 of the leatherback, 7 of the green, and 3 of the hawksbill sea turtles are expected to be caught in pound nets. The remaining turtles would be captured utilizing relocation trawls as part of dredging activities authorized under separate permits and then turned over to the applicant. All turtles would be blood sampled, measured, weighed when practicable, flipper tagged, and PIT tagged. A subset of these animals would have satellite or

radio/sonic transmitters attached to their carapace, and would be laparoscopied and bone biopsied. Twenty loggerheads would be used in a whelk gear bycatch reduction study.

Dated: August 18, 2005.

Steve Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–16842 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990907250–5223–03; I.D. 072905B]

Revised Guidelines for NOAA's Community-based Restoration Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for comments on proposed revisions to Program Guidelines for the NOAA Community-based Restoration Program.

SUMMARY: NMFS initiated a Community-based Restoration Program (Program) in 1996 that provides Federal financial and technical assistance to encourage locally led coastal and marine habitat restoration, and to promote stewardship and conservation values for NOAA trust resources. The Program is a systematic national effort to foster partnerships at national, regional and local levels to implement sound habitat restoration. Partnerships are forged between government, not-for-profit organizations, community groups, recreational and commercial fishing organizations, students and educational institutions, businesses, youth conservation corps and private landowners. Under the Program, partners may contribute funding, land, technical assistance, workforce support or other in-kind services; promote local participation in habitat restoration activities; undertake research and monitoring to evaluate and improve project success; and facilitate stewardship for restored resources at the local level. To date, the Program has funded more than 1000 community-based habitat restoration projects in 27 states, Canada, and the Caribbean. NMFS is issuing revised guidelines for Program implementation for FY 2006 and beyond, to reflect the evolution of the program since its original implementation. NMFS is seeking comments from interested parties on the revised guidelines. One or more constituent meetings are also planned to solicit feedback on the Program and the revised Program guidelines. This is not a solicitation of project proposals.

DATES: Comments must be submitted by email or mail by October 11, 2005. To support the continued evolution of the Program, and as part of the Program Guidelines revision, the Restoration Center plans to solicit feedback through one or more constituent meetings. Meetings will be limited to approximately 30 participants and will include facilitated break-out group discussions to maximize feedback results. The first meeting will be held on September 13, 2005, in Washington D.C. Subsequent meetings will be planned to coincide with restoration-related conferences or meetings throughout 2006 to enable constituent participation without travel. These meetings will be physically accessible to people with disabilities. Requests for more information regarding the September meeting, including registration and requests for sign language or other auxiliary aids, should be directed to Robin Bruckner (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: Please send your comments by email to: *CRP.Guidelines@noaa.gov*, or by mail to: Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Robin Bruckner, (301) 713–0174, or by e-mail at *Robin.Bruckner@noaa.gov*.

SUPPLEMENTARY INFORMATION: Proposed Guidelines for the NOAA Community-based Restoration Program were provided at 64 FR 53339, October 1, 1999. In that document, comments were sought on modifications to the Program that would allow greater flexibility to support community-based habitat restoration projects. Final Program Guidelines, including responses to comments, were provided at 65 FR 16890, March 30, 2000. Since the Guidelines were issued, the Program has experienced an increase in base funding and has subsequently implemented increased numbers of locally initiated, grass-roots habitat restoration projects through partnerships at the local, regional and national levels. The NOAA Restoration Center within NMFS is issuing revised guidelines, proposed here, that reflect the evolution of the Program, including measures that are in place or planned to enable the Program to demonstrate increased accountability for the expenditure of public dollars.

Background

Habitat loss and degradation threaten the long-term sustainability of the nation's fishery resources. Over 75 percent of commercial fisheries and 80 to 90 percent of recreational marine and diadromous fishes depend on estuarine or coastal habitats for all or part of their life cycles. Protecting existing, undamaged habitat is a priority and should be combined with coastal habitat restoration to enhance the functionality of degraded habitat. Restored coastal habitat will help rebuild fisheries stocks and recover threatened and endangered species. Restoring marine and coastal habitats will help ensure that valuable natural resources will be available to future generations of Americans.

The purpose of this document is to replace the Program Guidelines that were published in 2000, and outline the goals, objectives, and structure of the Program that will guide its implementation in FY 2006 and beyond. This notice also references changes made by NOAA to standardize evaluation criteria for its competitive grant programs. The Program will provide annual notification regarding the availability of funds through the NOAA Omnibus **Federal Register** Notice process and associated Federal Funding Opportunity (FFO) detail, and will solicit project proposals once a year, or more.

Electronic Access

Information on the Program, including partnerships and projects that have been funded to date, can be found on the World Wide Web at: *http://www.nmfs.noaa.gov/habitat/restoration*.

Overview of Changes to the Program

Since the Program began, Congressional appropriations have increased from $250,000 in 1999 to $13.6 million in 2005. To effectively manage this growth, to provide better service to constituents, and to accurately report on the Program's accomplishments, the Restoration Center has changed some of its practices and implemented a number of tools to increase efficiency and accountability.

In 2001 a Restoration Center database was launched to track habitat acres created, established, rehabilitated, enhanced or protected; stream miles made accessible to diadromous fish; volunteer or community participation hours; restoration techniques used; habitat types and species benefited; and other parameters for Restoration Center supported projects. The database has

increased NOAA staff efficiency and allows the Restoration Center to respond quickly and accurately to Congressional and Administrative inquiries, such as those on Program performance measures, through reporting features that can calculate the acreage or stream miles restored by all projects completed in any particular year, for example. Recent enhancements to the database include additional fields related to environmental compliance, display and collection of project locations through a Geographic Information System (GIS) based mapping application, and revised parameters to facilitate data-sharing with the National Estuaries Restoration Inventory.

To evaluate the progress of the work proposed under Program awards, to determine whether projects were successfully completed, and to facilitate population of the database with project-specific information, the Restoration Center sought and received approval in 2004 from the Office of Management and Budget (OMB) to collect detailed project information from grantees. This information, such as restoration techniques used, species benefited, geographic coordinates of project sites, and monitoring and outreach information, is now required as part of semi-annual progress reporting. Before April 2006, the Restoration Center plans to seek renewed approval from OMB, under the Paperwork Reduction Act, to continue collecting this information.

In coordination with the Estuaries and Clean Waters Act of 2000 (Public Law 106–457), the Restoration Center has also begun requiring science-based monitoring of restoration projects, where appropriate, in an effort to improve on-the-ground restoration efforts and increase Program effectiveness. Applicants requesting funding to implement on-the-ground habitat restoration projects that will result in structural or functional habitat changes must have clearly identified goals (broad in scope) and specific, measurable objectives. Evaluating these objectives requires monitoring, during the project period, of at least one structural and one functional parameter, as supported by Title I of the Estuaries and Clean Waters Act of 2000 (Public Law 106–457), to ensure a basic assessment of project success. A fact sheet with examples of structural and functional monitoring parameters is available on the World Wide Web at: *http://www.nmfs.noaa.gov/habitat/restoration*, and assistance in refining the objectives and/or selecting appropriate parameters is available from Program staff.

The Program anticipates that a limited portion of annually available funds may be used to support high quality, quantitative monitoring projects to advance the science and technology of coastal and marine habitat restoration to support the Restoration Center's Research Program area. Independent applications emphasizing science-based monitoring of previously completed Community-based Restoration Program projects may be accepted, however, applications for research or monitoring of projects not funded by the Program will not be considered under annual funding solicitations unless funding for the Program increases significantly.

In conjunction with science-based monitoring of projects, the Program will begin assessing and monitoring the human dimensions (demographic, economic, psychological, cultural, and ethical aspects) of habitat restoration. Fostering a community's and an individual's stewardship ethic is an important component of the Program. It is assumed with some certainty that participating in on-the-ground restoration projects cultivates and promotes environmental stewardship; however, the Program expects to begin quantifying this assumption over the next several years.

Both the Restoration Center Database and implementation of minimum monitoring requirements support NOAA's strategic plan and allow better project tracking and evaluation of performance measures. Revision of habitat-related and other relevant performance measures in coordination with all major NOAA programs involved with habitat restoration is ongoing through NOAA's Habitat Program.

Program Goals and Objectives

The goals and objectives that have defined the Program to date have not changed. These include:

- Producing on-the-ground habitat restoration within a relatively short time period;
- Using a competitive, technical review process, whenever possible, to maximize opportunities for public access to Program resources;
- Partnering with national and regional organizations, as well as local groups, to undertake habitat restoration;
- Offering NOAA technical expertise in addition to financial assistance for project design, implementation, and environmental compliance;
- Leveraging NOAA's financial contribution by collaborating with other governmental agencies, industry and businesses, non-governmental and not-for-profit organizations, and academia;
- Ensuring projects are monitored to evaluate success and direct corrective actions; and
- Encouraging long-term stewardship and catalyzing future habitat restoration projects.

In general, the Program's objective is to establish or supplement partnerships to implement coastal and marine habitat restoration projects that benefit NOAA trust resources. Partnerships with citizen groups, public and not-for-profit organizations, industry, corporations and businesses, youth conservation corps, students, landowners, and local government, and state and Federal agencies are supported through the provision of Federal financial and technical assistance at national, regional and local levels. Partners help identify and secure additional funding, land, technical assistance, workforce support or other in-kind services to enable citizens to improve locally important habitats that sustain living marine and coastal resources. Projects are most often implemented in coastal and nearshore marine and estuarine environments and in riverine environments that support diadromous fish; expansion of the Program to the Great Lakes is being considered, and will be dependent on the NOAA Habitat Program's goals and Congressional appropriations made for this purpose. It is anticipated that any projects supported in the Great Lakes region will fall under these Program Guidelines.

The Program places emphasis on habitat restoration projects with strong community support and recognizes the significant role that communities can play in habitat restoration and protection. Projects that incorporate citizens' ''hands-on'' involvement in project implementation, monitoring, or outreach and education are preferred. The role of NOAA in the Program is to strengthen the development and implementation of sound restoration projects. NOAA staff will continue to provide guidance and technical expertise on permitting, environmental compliance, engineering and design, and similar aspects required for project implementation.

Successful applicants will be those whose projects demonstrate collaboration among entities such as nonprofit organizations, citizen groups, industry, youth conservation corps, students, landowners, academics, local government, and state, and federal agencies to implement habitat restoration projects. Projects should be able to report a net gain in habitat acres restored or stream miles re-established for diadromous fish passage, and should document volunteer involvement and a

maximization of project partnerships. Eligibility requirements will be detailed in annual solicitations.

The NOAA Restoration Center uses cooperative agreements focused at two distinct levels of partnership as the primary funding mechanism to accomplish habitat restoration. Direct project funding is announced annually in NOAA's Omnibus **Federal Register** Notice. This opportunity focuses on partnerships at the local level, and project awards currently provide up to $250,000 to support individual habitat restoration projects, or a suite of well developed restoration projects, for up to 24 months. National and Regional Habitat Restoration Partnership funding is announced every 3 years through the NOAA Omnibus **Federal Register** Notice. Partnership awards are up to 36 months in duration, are usually larger than project awards, and specific projects are often not identified at the time of application. Partnership applications outline the concept and focus of habitat restoration activities and detail the mechanism under which individual projects will be identified and subsequently funded as subawards through the partner organization. Partner organizations assume the administrative responsibilities for subawards, such as letting contracts and managing progress and financial reports. This allows NOAA staff to focus on assisting with project implementation. The next solicitation for national and regional habitat restoration partnerships is expected to be published in June 2006, for 2007–2010 funding.

Eligible Restoration Activities

Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passage; reef/substrate creation; establishment of riparian buffer zones and improvement of freshwater habitat features in watersheds that support diadromous fish; exclusionary fencing and planting; invasive species removal; planting of native coastal wetland and submerged aquatic vegetation; and enhancement of feeding, spawning and growth habitat essential to marine or diadromous fish, including degraded areas that historically were important habitat for living marine and coastal resources, and through the restoration of which would support these resources again.

Program Priorities

In general, restoration project proposals will be expected to clearly demonstrate anticipated benefits to specific NOAA trust resource habitats; describe how these benefits will be achieved through the proposed restoration activities, and identify the range of species expected to benefit. NOAA trust resource habitats include but are not limited to, estuaries, salt marshes, seagrass beds, coral reefs, shellfish reefs, mangrove forests, and riparian habitat near rivers, streams and creeks used by diadromous fish.

NMFS will emphasize selection of restoration projects that address habitats whose regional condition is compromised due to loss, fragmentation, presence of invasive species, or loss of functionality. In addition, habitat restoration projects will be favored if they are socially and economically important (e.g. will benefit essential fish habitat that supports commercial or recreational fishery resources, or that improves aesthetic and stewardship value of NOAA trust resource habitats) within their region. Within a given habitat, priority will also be given to project proposals that incorporate proven effective restoration techniques, address causes of habitat degradation/loss, and maximize cost-effectiveness.

Since the inception of the Program, West Coast projects have focused primarily on restoration of salmonid freshwater habitats. To broaden the scope of funded projects in the Pacific Northwest and California, the Program may give priority to proposals for projects that benefit multiple species, including non-salmonid resources, and projects that emphasize restoration of marine and estuarine habitats. The Program expects to continue to support freshwater salmonid habitat restoration efforts, however projects that benefit multiple species including non-salmonid marine resources may receive greater funding consideration. In addition, any salmonid project that would occur where NOAA species recovery planning efforts are underway must be consistent with those planning efforts.

While the primary focus of the Program is to provide funding and technical expertise to support on-the-ground implementation of fishery habitat restoration projects that involve an outreach and/or volunteer component tied to the restoration activities, the Program recognizes that accomplishing restoration is a multi-faceted effort involving project design, engineering services, permitting, short-term baseline studies, construction, oversight, monitoring, and education and outreach. In cases where on-the-ground funding for a project has been secured or is deemed likely, and/or community support for a restoration project is high, but pre-implementation funding to conduct feasibility studies or engineering and design is limiting a project's forward progress, the Program reserves the right to consider funding such pre-implementation activities. Proposals emphasizing a singular component, such as only education or program coordination will be discouraged, as will applications that propose to expand an organization's day-to-day activities, or that primarily seek support for administration, salaries, overhead, and travel. Because requests for habitat restoration funds historically exceed funds available, funding land purchase agreements, conservation easements, and large equipment purchases such as vehicles, boats and similar items will receive low priority.

Although NMFS recognizes that water quality issues may impact habitat restoration efforts, this Program is intended to fund projects that target physical and/or biological habitat restoration rather than those that result in direct water chemistry improvements (i.e. wastewater treatment plant upgrades or combined sewer outfall corrections). Similarly, the following restoration projects will not be eligible for funding: (1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by local, state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal, state or local law; and (3) activities that are required by a separate consent decree, court order, statute or regulation. Funds from this Program may be sought to enhance restoration activities beyond the scope legally required by these activities.

Environmental Compliance

It is the applicant's responsibility to obtain all necessary Federal, state and local government permits and approvals for the proposed work. Applicants are expected to design their projects so that they minimize the potential for adverse impacts to the environment. NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applications that seek NOAA funding. Proposals should provide enough detail for NOAA to make a NEPA determination. Successful applications cannot be forwarded to the NOAA Grants Management Division with recommendations for funding until NOAA completes necessary NEPA documentation.

Consequently, as part of an applicant's package, and under the

description of proposed activities, applicants will be required to provide detailed information on the activities to be conducted, such as site locations, species and habitat(s) to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use of and/or disposal of hazardous or toxic substances, introduction of non-indigenous species, impacts to endangered and threatened species, impacts to coral reef systems, etc.). For partnerships, where project-specific details may not be available at the time an award is made, partners must meet the same environmental compliance requirements on subsequent sub-awards.

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be required to assist NOAA in drafting of an environmental assessment if NOAA determines an assessment is necessary and that one does not already exist for the activities proposed in the application. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The selecting official may decide, at the time of proposal review, to recommend funding a project in phases to enable an applicant to provide information needed for an environmental assessment, feasibility analysis or similar activity if a NEPA determination cannot be made for all activities in a particular application. The selecting official may also impose special award conditions that limit the use of funds for activities that have outstanding environmental compliance requirements. Special award conditions may also be imposed to ensure grantees consider and plan for the safety of volunteers, and provide appropriate credit for NOAA and other contributors, for example.

Funding Sources and Dispersal Mechanisms

The Restoration Center envisions funding projects through cooperative agreements and grants, contracts, joint project agreements, and intra- and interagency transfers, as appropriate.

A cooperative agreement is a legal instrument reflecting a relationship between NOAA and a recipient whenever (1) the principal purpose of the relationship is to provide financial assistance to the recipient and (2) substantial involvement is anticipated between NOAA and the recipient during performance of the contemplated activity. A grant is similar to a cooperative agreement, except that in the case of grants, substantial involvement between NOAA and the recipient is not anticipated during the performance of the contemplated activity. Financial assistance is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation that is authorized by Federal statute.

A contract is a procurement instrument used when the primary purpose is to acquire goods or services for government use. Contracts may be used by the Program when NOAA directly implements priority restoration projects.

The Secretary of Commerce has authority to enter into joint project agreements with not-for-profit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned. The principal purpose of a joint project agreement under this Program is to engage in a collaborative and equitably apportioned effort with a qualified organization on matters of mutual interest.

For purposes of this Program, interagency agreements are written documents that contain specific provisions of governing authorities, agency responsibilities, and funding. Such agreements are entered into between NOAA and a reimbursing Federal agency or between another Federal agency and NOAA when NOAA is the funding organization. Such agreements will also require the inclusion of a local sponsor for the restoration project.

The instrument chosen will be based on such factors as degree of direct NOAA involvement with the project beyond the provision of financial assistance, the proportion of funds invested in the project by NOAA and the other organizations, and the efficiency of the different mechanisms to achieve the Program's goals and objectives. The Restoration Center will determine which method is the most appropriate based on the specific circumstances of each project.

NOAA reserves the right to fund individual projects directly, or through partnership arrangements. The Program will continue to create partnership arrangements at the national and regional level with organizations that have similar goals for improving fisheries habitat. Partnerships are a key element that allows the Restoration Center to significantly leverage the funding available for on-the-ground restoration. Partnerships also encourage sharing and distribution of technical expertise; they often improve coordination between diverse organizations with common goals, and they allow NOAA to reach larger and more diverse communities that have vested interests in fishery habitat restoration.

The Restoration Center will function in a clearinghouse capacity to help develop and link high quality habitat restoration proposals with other potential funding sources whose evaluation criteria contain similar specifications for habitat enhancement. This will provide greater exposure for project ideas and increase the chances for project proponents to secure funding.

Each year, the Restoration Center Director will determine the proportion of Program funds that will be allocated to National and Regional Habitat Restoration Partnerships and the proportion available for direct project funding. The proportion will be established annually and may depend upon the amount of funds available from partnership organizations to leverage NOAA dollars and the ability of partners to help NOAA fund a broad array of projects over a wide geographic distribution. A synopsis of the partnership and/or project funding opportunity will be published in NOAA's Omnibus **Federal Register** Notice, typically in June of each year. Potential applicants will be directed to additional information contained in any Federal Funding Opportunity (FFO) announced on *www.grants.gov*. FFO's will contain a Funding Opportunity Description, Award Information, Eligibility Information, Application and Submission Information, Application Review and Selection Information, Award Administration Information, Administrative and National Environmental Policy Act Requirements, Agency Contacts, and other information for potential applicants.

The public should note that since publication of the initial Program Guidelines in 2000, NOAA has adopted five standard evaluation criteria for all its competitive grant programs, as follows: (1) Importance and Applicability of Proposal -This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state or local activities; (2) Technical/ Scientific Merit This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives; (3) Overall Qualifications of Applicants This criterion ascertains whether the applicant possesses the necessary education, experience, training,

facilities, and administrative resources to accomplish the project; (4) Project Costs - This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time-frame; and (5) Outreach, Education, and Community Involvement - NOAA assesses whether the project provides a focused and effective education and outreach strategy regarding NOAA's mission. Information on how these criteria are specifically applied in the context of Community-based Restoration Program application evaluation are described each year in the FFO, and are currently available for the Program for FY 2006 on *www.grants.gov* (funding opportunity number NMFS-HCPO–2006–2000334).

Funding Ranges

In 2005, the Restoration Center accepted proposals requesting between $30,000 and $250,000; typical restoration project awards range from $50,000 to $200,000. This represents an increase in upper and lower funding ranges for projects from earlier Program Guidelines. Funding at lower levels (<$15,000) is no longer cost-effective due to increasing operational costs necessary to ensure environmental compliance; funding fewer projects at higher dollar amounts has also led to increases in Program efficiency.

Awards for establishing multi-year, National and Regional Habitat Restoration ''umbrella'' Partnerships, under which individual projects will be jointly reviewed and prioritized for funding, are anticipated to range between $100,000 and $2.0 million, with that range of funding anticipated to be provided to successful partnerships annually during a partnership's duration. Subsequent allocation of funding during the multi-year award period will be dependent on the satisfactory performance of the partner organization.

Project and Partnership solicitations (FFO's) will contain information on funding ranges, the weighting of NOAA's standard evaluation criteria, and additional factors that may be used by the selecting official to recommend a slate of projects to the Grants Management Division to receive awards. The number of awards and funding ranges to be made in FY 2006 and beyond will depend on the amount of funds appropriated to the Program annually by Congress.

Examples of Previously Funded Projects

The following examples are community-based restoration projects that have been funded with assistance from the Restoration Center. These examples are only illustrative and are not intended to limit the scope of future proposals in any way.

Fish Ladder Construction

An impediment to fish passage was corrected through the design and construction of a step-pool fish ladder, which now allows native steelhead trout to reach their historic spawning grounds.

Invasive Plant Removal

A coalition of volunteer groups called ''Pepper busters'' worked to remove exotic Brazilian pepper plants and replant native shoreline vegetation.

Salt Marsh Restoration

An undersized culvert was replaced to increase the mean high water level in the restricted portion of a marsh and restore tidal flushing to 20 acres of salt marsh.

Oyster Reef Restoration

Oyster reef habitat was increased by reconstructing historic reefs and seeding them with hatchery-produced seed oysters grown in floating cages by students.

Submerged Aquatic Vegetation Restoration

An evaluation of the feasibility of using volunteer divers to restore seagrass was developed. A protocol was created to train volunteers in water quality monitoring and seagrass transplantation techniques.

Kelp Forest Restoration

Community dive groups were trained in kelp reforestation activities, including the preparation, planting and maintenance of kelp sites, documentation of growth patterns, and changes in marine life attracted to the newly planted kelp areas.

Wetland Plant Nursery

An innovative wetland nursery program was implemented in local high schools, where science and ecology classes build wetland nurseries on campus to grow salt marsh grasses for local restoration efforts.

Derelict Fishing Gear Removal

A pilot project consisted of developing protocols and conducting initial removal efforts. After surveying, locating, and mapping derelict fishing gear, a minimum of 11 tons of lost and abandoned fishing gear was removed by licensed and certified divers.

Nuisance Dam Removal

Two small stone dams blocked fish migration, and degraded water quality and prey habitat conditions for anadromous fish. The dams, while only several feet high, also presented a public safety hazard. This project resulted in opening stream habitat to anadromous fish, restoring acres of tidal wetlands, and removal of a public safety hazard.

Riparian Habitat Restoration

Youth corps members were trained in the use of biorestoration and stabilization techniques to restore eroding riverbanks and improve habitat for salmon smolt and other fish species.

Diadromous Fish Habitat Restoration

Highly functional salmonid and wildlife habitat was restored with the cooperation of private landowners by opening silted enclosures along a slough to provide refuge for juvenile salmonids during the winter flood flows.

Dated: August 19, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries. Service.

[FR Doc. 05–16844 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled AmeriCorps*VISTA Progress Report to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Carol Rogers at (202) 606–6815 or e-mail at *crogers@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods

within 30 days from this date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Commuity Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose 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, *e.g.*, permitting electronic submission of responses.

Comments: A 60-day comment Notice was published in the **Federal Register** on March 3, 2005. This comment period ended May 2, 2005 and resulted in no comments being received.

Description: The Corporation requests reinstatement, with changes, of its AmeriCorps*VISTA Project Progress Report which reflects the Corporation's intention to modify selected sections of the collection instrument to reflect changes in data considered ''core reporting'' information to meet a variety of needs, including modification of data elements, including adding new data elements as needed to ensure information collection captures appropriate data for the Corporation's required performance measurement and other reporting.

The Project Progress Report (PPR) was designed to assure that AmeriCorps*VISTA sponsors address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the memorandum of agreement.

Further, the reinstatement of the previously used PPR will: (a) Enhance data elements collected via this information collection tool; (b) migrate the paper version of the form to the Corporation's electronic grants management system, eGrants; and (c) establish reporting periods consistent with the Corporation's integrated grants management and reporting policies.

Type of Review: Revision of a currently-approved collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA Project Progress Report.

OMB Number: 3045–0043.

Agency Number: None.

Affected Public: AmeriCorps*VISTA sponsoring organizations, site supervisors, and members.

Total Respondents: 1300.

Frequency: Quarterly.

Average Time Per Response: 14.7 hours.

Estimated Total Burden Hours: 19,110 hours per submission. Total annual burden assuming quarterly submission is 74,440 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 18, 2005.

Howard Turner,

*Acting Director, AmeriCorps*VISTA.*

[FR Doc. 05–16765 Filed 8–23–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its Application Instructions for State Commissions. These applications are used by current and prospective grantees to apply for funds to support AmeriCorps States and Territories Competitive, Education Award Program, and Formula Grants.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 24, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Amy Borgstrom, Associate Director for Policy, AmeriCorps State and National, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8410 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy, AmeriCorps State and National.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930, or by e-mail at *aborgstrom@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background: Since the President's Call to Service, many Americans have expressed a renewed desire to serve their country by volunteering in their

community. Now, we have an obligation to ensure that Americans have quality opportunities to serve. The Corporation has amended several provisions relating to the AmeriCorps national service program, and has added a rule to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements. The implementation of these changes through the rulemaking process includes ensuring the Corporation's information collection instruments accurately reflect these issues.

In an effort to be compliant while maintaining functions essential to the operations of each State Commission and AmeriCorps program, we are submitting the enclosed request to OMB for approval of information collection activities. This submission includes application instructions which are used by state commissions to apply for AmeriCorps States and Territories Competitive, Education Award Program, and Formula Grants. The application is completed electronically using eGrants, the Corporation's web-based grants management system.

Current Action: The Corporation seeks to renew and revise the current Application Instructions for State Commissions due to Rulemaking. When revised, the Application Instructions will revise/clarify the Application Instructions especially as they are affected by new regulations. In addition, these Application Instructions which previously were included in a larger collection, will now be separated into a new collection.

The application will otherwise be used in the same manner as the existing application for State Primes which was included in the AmeriCorps National, State, and Indian Tribes and U.S. Territories 2005 Application Instructions, and which it replaces. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on September 30, 2005.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Application Instructions for State Commissions (formerly 2005 State Commission Administrative Guidance and Prime Application Instructions).

OMB Number: New.

Agency Number: None.

Affected Public: State Commissions applying for AmeriCorps States and Territories Competitive, Education Award Program, and Formula Grants.

Total Respondents: 54.

Frequency: Annually for Competitive and Formula, bi-annually for the Education Award Program.

Average Time per Response: Averages 24 hours.

Estimated Total Burden Hours: 1296.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 18, 2005.

Rosie Mauk,

Director, AmeriCorps.

[FR Doc. 05–16841 Filed 8–23–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on September 13 is to review continuing research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1M. The topic of the meetings on September 14–15 are to review new start research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: September 13, 2005 from 8 a.m. to 5:15 p.m. (continuing research and development projects). September 14, 2005 from 8:30 a.m. to 5 p.m. (new start research and development projects). September 15, 2005 from 8:30 a.m. to 3:30 p.m. (new start research and development projects).

ADDRESSES: SERDP Program Office, Conference Facility, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Misa Jensen, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: August 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–16776 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to Alter a System of Records; HDTRA 007 Security Operations.

SUMMARY: The Defense Threat Reduction Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 23, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on August 16, 2005 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 007

SYSTEM NAME:

Security Operations (December 14, 1998, 63 FR 68736).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete primary location and replace with ''Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201''.

Delete secondary location and replace with ''Security Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201''.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name; Social Security Number; date and place of birth; height; weight; hair and eye color; citizenship; grade/rank; service; organization; security clearance; date of clearance; date of investigation; type of investigation; Agency that conducted investigation; basis special accesses; courier authorization; continuous access roster expiration date; badge number; vehicle ID and decal number; special intelligence access; expiration date; agency, billet number; list of badges/passes issued; safes and open storage locations/custodians; conference title/duties/location; Department of Defense Form 1879; Standard Form SF 86; Reports of Investigation; special access/briefings; visit requests; conference rosters; clearance and special access rosters; picture identification; and correspondence concerning adjudication/passing of clearances/accesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''E.O. 10450, Security Requirements for Government Employment; E.O. 12065, National Security Information; The Internal Security Act of 1950 (Pub. L. 831), Section 21, as amended and codified at 50 U.S.C. 797; The Atomic Energy Act of 1954, Section 145; and E.O. 9397 (SSN).''

PURPOSE(S):

Delete ''and other DoD Components'' from the first line of the entry.

* * * * *

STORAGE:

Delete first sentence and replace with ''Automated records are stored on magnetic tapes, discs, computer printouts, hard drives, and DTRA computer server.''

* * * * *

SAFEGUARDS:

Delete last sentence and replace with ''Buildings are protected by security forces and an electronic security system.''

RETENTION AND DISPOSAL:

Delete first sentence and replace with ''Computer records on individuals are moved to historical area of database files upon termination of an individual's affiliation with DTRA; personnel security files are retained for two years at which point the SF 312 is mailed to National Archives Repository and all other information is destroyed.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete address and replace with ''Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir VA 22060–6201''

NOTIFICATION PROCEDURE:

Delete address and replace with ''Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir, VA. 22060–6201''.

RECORD ACCESS PROCEDURES:

Delete address and replace with ''Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir VA 22060–6201''.

CONTESTING RECORD PROCEDURES:

Delete address and replace with ''Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir VA 22060–6201''.

* * * * *

HDTRA 007

SYSTEM NAME:

Security Operations.

SYSTEM LOCATION:

Primary location: Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

SECONDARY LOCATIONS:

Security Office, Defense Threat Reduction Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Technology Security Directorate, Defense Threat Reduction Agency, 400 Army Navy Drive, Arlington, VA 22202–2884.

Albuquerque Operations, Defense Threat Reduction Agency, 1680 Texas Street, SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel assigned to, or employed by Defense Threat Reduction Agency (DTRA).

Other U.S. Government personnel, U.S. Government contractors, foreign government representatives, and visitors from foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; date and place of birth; height; weight; hair and eye color; citizenship; grade/rank, service; organization, security clearance; date of clearance; date of investigation; type of investigation; Agency that conducted investigation; basis special accesses; courier authorization; continuous access roster expiration date; badge number; vehicle ID and decal number; special intelligence access; expiration date, agency, billet number; list of badges/passes issued; safes and open storage locations/custodians; conference title/duties/location; Department of Defense Form 1879; Standard Form SF 86; Reports of Investigation; special access/briefings; visit requests; conference rosters; clearance and special access rosters; picture identification; and correspondence concerning adjudication/passing of clearances/accesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, Security Requirements for Government Employment; E.O. 12065, National Security Information; The Internal Security Act of 1950 (Pub. L. 831), Section 21, as amended and codified at 50 U.S.C. 797; The Atomic Energy Act of 1954, Section 145; and E.O. 9397 (SSN).

PURPOSE(S):

For use by officials and employees of the Defense Threat Reduction Agency in the performance of their official duties related to determining the eligibility of individuals for access to classified information, access to buildings and facilities, or to conferences over which DTRA has security responsibility.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: Officials and employees of Government contractors and other Government agencies in the performance of their official duties related to the screening and selection of individuals for security clearances and/or special authorizations, access to facilities or attendance at conferences.

The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, discs, computer printouts, hard drives, and DTRA computer server. Manual records are stored in paper file folders, card files and paper rosters.

RETRIEVABILITY:

Automated records are retrieved by individual's last name, Social Security Number, conference title, and by type of badge issued. Manual records are retrieved by individuals' last name, Social Security Number, organization or subject file.

SAFEGUARDS:

The computer facility and terminals are located in restricted areas accessible only to authorized personnel. Manual records and computer printouts are available only to authorized persons with an official need to know. Buildings are protected by security forces and an electronic security system.

RETENTION AND DISPOSAL:

Computer records on individuals are moved to historical area of database files upon termination of an individual's affiliation with DTRA; personnel security files are retained for two years at which point the SF 312 is mailed to National Archives Repository and all other information is destroyed. Manual records or conference attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir VA 22060–6201.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir VA 22060–6201.

Written requests for information should contain the full name, home address, Social Security Number, date and place of birth. For personal visits, the individual must be able to provide identification showing full name, date and place of birth, and their Social Security Number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir VA 22060–6201.

RECORD SOURCE CATEGORIES:

Information is extracted from military and civilian personnel records, investigative files, and voluntarily submitted by the individual. Other Government agencies, law enforcement officials and contractors may provide the same data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 318. For additional information contact the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

[FR Doc. 05–16665 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Amend a System of Records; T1300 Disbursing Officer Establishment and Appointment Files.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 23, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

T1300

SYSTEM NAME:

Disbursing Officer Establishment and Appointment Files (August 30, 2000, 65 FR 52715).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy 4 years after cutoff.''

* * * * *

T1300

SYSTEM NAME:

Disbursing Officer Establishment and Appointment Files.

SYSTEM LOCATION:

Defense Finance and Accounting Service—Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

Defense Finance and Accounting Service—Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

Defense Finance and Accounting Service—Indianapolis Center, 8899 East 56th Street, Indianapolis, IN 46249–0001.

Defense Finance and Accounting Service—Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Defense Finance and Accounting Service—Columbus Center, 4280 East 5th Avenue, Building 3, Columbus, OH 43218–2317.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members and DoD civilians who are appointed as deputies and individuals appointed as accountable disbursing officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include forms for designation and appointment of deputy and disbursing officer, letters to Federal Reserve banks, and requests for approval and appointment of accountable officers; appointment letters; commencement of disbursing duty letters; Financial Management Service Forms 3023, Specimen Signatures and 5583, Signature Card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD 7000.14–R, DoD Financial Management Regulation; DFAS 005, Delegation of Statutory Authority; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used to determine whether an individual has held an accountable position in the past.

To obtain data for the appointment or termination of deputies and the appointment or termination of other than finance officers as accountable officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal Reserve banks to verify authority of the accountable individual to issue Treasury checks.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Maintained in file folders, optical disk systems, and computer databases.

RETRIEVABILITY:

By individual's name, Social Security Number and accounting and disbursing station number.

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing, and are authorized to use, the record system in performance of their official duties who are properly screened and cleared for need to know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by screening of personnel and registering of visitors.

RETENTION AND DISPOSAL:

Destroy 4 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Network Operations, Defense Finance and Accounting Service—Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

Director of Accounting Operations, Defense Finance and Accounting Service—Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

Director of Network Operations, Defense Finance and Accounting Service—Indianapolis Center, 8899 East 56th Street, Indianapolis, IN 46249–0001.

Director of Accounting Operations, Defense Finance and Accounting Service—Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Director of Accounting Operations or Network Operations, Defense Finance and Accounting Service—Columbus Center, 4280 East 5th Avenue, Building 3, Columbus, OH 43218–2317.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide sufficient proof of identity, such as full name, Social Security Number, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the records management officer or the Privacy Act Officer at the appropriate DFAS Center.

Individual should provide sufficient proof of identity, such as full name, Social Security Number, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Finance and accounting officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–16667 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice To Amend a System of Records; T7332c Bankruptcy Processing Files.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 23, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

T7332c

SYSTEM NAME:

Bankruptcy Processing Files (January 7, 1999, 64 FR 1005).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy 6 years and 3 months after closure of the case.''

* * * * *

T7332c

SYSTEM NAME:

Bankruptcy Processing Files.

SYSTEM LOCATION:

Defense Finance and Accounting Service—Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.

Defense Finance and Accounting Service—Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Defense Finance and Accounting Service—Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Defense Finance and Accounting Service—Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219–1879.

Defense Finance and Accounting Service—Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army, Air Force, Marine, and Navy military members, and Department of Defense civilian employees for whom bankruptcy notice has been received.

Employees of the Executive Office of the President for whom bankruptcy notice has been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's court notices, financial statements, certificates for deductions; agreements, military pay vouchers, correspondence between DFAS General Counsel and subordinate units, United States Attorneys, United States District Courts, and other Government agencies relevant to the proceeding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 137; 11 U.S.C. 101 *et seq.;* 31 U.S.C. 3711 and E.O. 9397 (SSN).

PURPOSE(S):

To maintain such information pertaining to individuals who have filed for bankruptcy so that the Department of Defense may take appropriate action, either as an employer or a creditor, to protect its legal obligations and interests arising out of, or as a result of, the bankruptcy proceeding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Executive and Judicial Branch entities to provide necessary and appropriate information for purposes related to, or in furtherance of, judicial or administrative proceedings involving an individual who has filed for bankruptcy.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed by individual's name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing and authorized to use the record system in performance of their official duties who are properly screened and cleared for need-to-know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy 6 years and 3 months after closure of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Defense Finance and Accounting Service—Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219–1879; Assistant General Counsel, Defense Finance and Accounting Service—Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001;

Assistant General Counsel, Defense Finance and Accounting Service—Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055;

Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service—Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–8002;

Assistant General Counsel, Defense Finance and Accounting Service—Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000; Assistant General Counsel, Defense Finance and Accounting Service—Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the

Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From courts, Government records, and similar documents and sources relevant to the proceeding.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–16668 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Amend a System of Records; T5500b Garnishment Processing Files.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 23, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

T5500b

SYSTEM NAME:

Garnishment Processing Files (July 13, 2000, 65 FR 43298).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy 6 years and 3 months after cutoff.''

* * * * *

T5500b

SYSTEM NAME:

Garnishment Processing Files.

SYSTEM LOCATION:

Office of the Assistant General Counsel, Garnishment Operations, Defense Finance and Accounting Service-Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present active duty and retired military personnel; present DoD Civilian employees; present Reserve and National Guard personnel and employees of the Executive Office of the President whose pay is garnished or attached under 5 U.S.C. 5220a; 10 U.S.C. 1408; 42 U.S.C. 659; and 42 U.S.C. 665.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual state court wage withholding notices or court order garnishment orders, interrogatories, correspondence between DFAS Office of General Counsel and parties to the case, DFAS pay units, United States Attorneys, United States District Courts and other State and Government agencies relevant to the processing of child support and commercial debt garnishment, applications under the Uniformed Services Former Spouses' Protection Act and applications for military involuntary allotments for commercial debt. Also bankruptcy trustees who received payments pursuant to Chapter 13 of the Bankruptcy Code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5520a, Garnishment of pay; 10 U.S.C. 1408, Payment of retired or retainer pay in compliance with court orders; 42 U.S.C. 659, Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations; 42 U.S.C. 665, Allotments from pay for child and spousal support owed by members of uniformed services on active duty; and E.O. 9397 (SSN).

PURPOSE(S):

Records are being maintained for the purpose of processing court orders for the garnishment of wages.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To former spouses, who receive payments under 10 U.S.C. 1408, for purposes of providing information on how their payment was calculated to include what items were deducted from the member's gross pay and the dollar amount for each deduction.

To state child support agencies, in response to their written requests for information regarding the gross and disposable pay of military and civilian employees, for purposes of assisting the agencies in the discharge of their responsibilities under Federal and State law.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing, and authorized to use, the record system in performance of their official duties who are properly screened and cleared for need-to-know. Additionally, records are in an office building protected by guards and controlled by screening of personnel and registration of visitors.

RETENTION AND DISPOSAL:

Destroy 6 years and 3 months after cutoff.

SYSTEM MANAGER AND ADDRESS:

General Counsel, Defense Finance and Accounting Service Headquarters, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

Assistant General Counsel, Garnishment Operations, Defense Finance and Accounting Service—Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2005.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service—Cleveland Center, 1240 E. Ninth Street, Cleveland, OH 44199–2055.

Individuals should provide sufficient proof of identity, such as full name, Social Security Number, and other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Privacy Act Officer, Defense Finance and Accounting Service—Cleveland Center, 1240 E. Ninth Street, Cleveland, OH 44199–2055.

Individuals should provide sufficient proof of identity, such as full name, Social Security Number, and other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Information is obtained from courts, Government records, individuals and similar documents and sources relevant to the proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–16670 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Amend a System of Records; T7290 Nonappropriated Fund Accounts Receivable System.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 23, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

T7290

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System (December 1, 2000, 65 FR 72545).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy 4 years after cutoff.''

* * * * *

T7290

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System.

SYSTEM LOCATION:

Director, Defense Finance and Accounting Service-Indianapolis Center, Director for Support Activity, 8899 East 56th Street, Indianapolis, IN 46249–2130.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past users of nonappropriated fund instrumentalities (NAFI) whose accounts show balances other than zero; persons using Post billeting facilities on a fee paid basis (bachelor officer quarters, visitor officer quarters and guest house facilities) and persons no longer using such facilities whose accounts have other than zero balances; any individual having a statement of account for the billing period, individuals occupying government housing at any military installation; individual class B telephone subscribers; members, customers or civilians having 30-day credit terms for charge sales and/or dues obligations to NAF activities; all persons whose accounts have been dishonored by banking institutions and their checks returned to NAF activities; and individuals who have cash loans charged to their accounts and any other debtor to a nonappropriated fund instrumentality (NAFI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, and rank; amount of charges, billings of items or services furnished; subsidiary ledgers containing detail of services billed and paid by individual; work order forms; invoice listings; monthly receipt vouchers; date and method of payment; file of billings associated with returned/dishonored checks; and other documents relevant for agency purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5514; 26 U.S.C. 6103(m)(2); 31 U.S.C. 3511, 3512, 3513, 3514, 3701, 3711, 3716, 3720; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain current rosters as subsidiary records for accounts

receivable and cash accountability control; to provide monthly statements to customers; to provide ledger balances for activity financial statements; to prepare aged listing of accounts receivable, 30, 60, and 90 days; to answer inquiries of members on account status and specific transactions; to permit collection of debts owed to a nonappropriated fund instrumentality.

Records in this system of records are subject to use in authorized approved computer matching programs regulated under the Privacy Act of 1974 (5 U.S.C. 552a), as amended, for debt collection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the General Accounting Office, the Department of the Treasury, Financial Management, and the Department of Justice for collection action for any delinquent account when circumstances warrant.

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of a debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to a DoD nonappropriated fund instrumentality.

To any other Federal agency for the purpose of effecting salary offset procedures under the provisions of 5 U.S.C. 5514, against a person employed by that agency when any creditor DoD nonappropriated fund instrumentality has a claim against the person.

To any other Federal agency including, but not limited to, the Internal Revenue Service and Office of Personnel Management for the purpose of effecting an administrative offset as defined at 31 U.S.C. 3701, of a debt.

To the Internal Revenue Service under the provision of 31 U.S.C. 3711(g)(9) to offset a tax refund due the taxpayer to collect or to compromise a Federal claim against the taxpayer.

To the Internal Revenue Service under the provisions of 26 U.S.C. 6103(m)(2) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim against the taxpayer.

Note: Disclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DoD purpose or disclosed to another Federal, state or local agency which seeks to locate the same individual for its own debt collection purpose.

To any other Federal, state or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for recoupment of debts owed a DoD nonappropriated fund instrumentality.

Any information in this system concerning an individual may be disclosed to a creditor Federal agency requesting assistance for the purpose of initiating debt collection action by way of a salary or administrative offset or tax refund offset against the individual.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the DFAS compilation of system of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING AND REPORTING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes and/or discs by account in numerical and alphabetical order; computer hard copy printouts filed in binders; copies of statements filed in folders.

RETRIEVABILITY:

By customer name and Social Security Number.

SAFEGUARDS:

Records are maintained in lock-type cabinets within storage areas accessible only to authorized personnel. Personnel having access are limited to those having an official need-to-know who have been trained in handling personal information subject to the Privacy Act.

RETENTION AND DISPOSAL:

Destroy 4 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Support Activity, Defense Finance and Accounting Service—Indianapolis Center, Attn: DFAS–IN/AQ, COL #337R, 8899 East 56th Street, Indianapolis, IN 46249–2130.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the custodian of nonappropriated funds activities at the installation where record is believed to exist. Official mailing addresses are available from the T3System manager.

Individual should furnish their full name, Social Security Number, and account number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the custodian of nonappropriated funds activities at the installation where record is believed to exist. Official mailing addresses are available from the System manager.

Individual should furnish their full name, Social Security Number, and account number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From daily transaction registers/journals received from billeting officer, signal officer, and/or club officers; from the Department of the Treasury and the Defense Manpower Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–16671 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–U

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice To Amend a System of Records; HDTRA 004 Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records.

SUMMARY: The Defense Threat Reduction Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 23, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 004

SYSTEM NAME:

Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records (December 14, 1998, 63 FR 68736).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry ''U.S. Environmental Protection Agency, Radiation Protection Guidance for Federal Agencies for Occupational Exposure, January 1987; and Air Force Instruction 48–125, The Air Force Personnel Dosimetry Program.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Commandant, Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.''

NOTIFICATION PROCEDURE:

Delete address and replace with ''General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

RECORD ACCESS PROCEDURES:

Delete address and replace with ''General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

CONTESTING RECORD PROCEDURES:

Delete address and replace with ''General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

* * * * *

HDTRA 004

SYSTEM NAME:

Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records

SYSTEM LOCATION:

Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian employees of the Department of Defense and other federal, state, and local government agencies, contractor personnel, and visitors from foreign countries, who participated in planned exercises.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; date of birth; service; grade/rank; specialty code; job series or profession; experience with radioactive materials such as classification as 'radiation worker;' use of film badge or other dosimetric device; respiratory protection equipment; training and actual work in anti-contamination clothing and respirators; awareness of radiation risks associated with exercises; previous radiation exposure; role in exercise; employer/organization mailing address and telephone; unit responsible for individuals radiation exposure records; time in exercise radiological control area; and external and internal radiation monitoring and/or dosimetry results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2013 and 2201 (Atomic Energy Act of 1954) and 10 CFR parts 10 and 20; 5 U.S.C. 7902 and 84 Stat. 1599 (Occupational Safety and Health Act of 1970) and 29 CFR Subparts 1910.20 and 1910.96; E.O. 12196, as amended, February 26, 1980, (Occupational Safety and Health Programs for Federal Employees); E.O. 9397 (SSN); U.S. Environmental Protection Agency, Radiation Protection Guidance for Federal Agencies for Occupational Exposure, January 1987; and Air Force Instruction 48–125, The Air Force Personnel Dosimetry Program.

PURPOSE(S):

For use by agency officials and employees in determining and evaluating individual and exercise collective radiation doses and in reporting dosimetry results to individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Officials and employees of other government agencies, authorized government contractors, current or potential employers, national, state and local government organizations and foreign governments in the performance of official duties related to evaluating, reporting and documenting radiation dosimetry data.

Officials of government investigatory agencies in the performance of official duties relating to enforcement of Federal rules and regulations.

The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer printouts and in paper files folders.

RETRIEVABILITY:

Records may be retrieved by names, Social Security Number, service or organization, grade/rank, dosimeter number, or date and place of participation.

SAFEGUARDS:

Records and computer printouts are available only to authorized persons with an official need to know. The files are in a secure office area with limited access during duty hours. The office is locked during non-duty hours.

RETENTION AND DISPOSAL:

All records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Inquiry should contain full name and Social Security Number of the individual and applicable dates of participation, if available. Visits can be arranged with the system manager.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Inquiry should contain full name and Social Security Number of the individual and applicable dates of participation, if available. Visits can be arranged with the system manager. Requests from current or potential employers must include a signed authorization from the individual.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Information in this system of records was supplied directly by the individual; or derived from information supplied by the individual; or supplied by a contractor or government dosimetry service; or developed by radiation measurements at the exercise site.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–16774 Filed 8–23–05; 8:45 am]
BILLING CODE 5001–06–U

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter an exempt system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: Comments must be received on or before September 23, 2005, to be considered by this agency.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6503.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 16, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

A0195–2c USACIDC DoD

SYSTEM NAME:

DoD Criminal Investigation Task Force (CITF) Files (February 25, 2005, 70 FR 9286).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Any individual involved in, or suspected of being involved in, war crimes or acts of terrorism affecting U.S. interests (e.g., property located in or outside of the United States), U.S. nationals, and/or U.S. personnel. Individuals who provide information that is relevant to the investigation, such as victims, witnesses, and those who report such crimes or acts.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Add ''criminal'' before ''intelligence reports''.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the second paragraph, add at the end ''or terrorist activities''.

In the third paragraph, delete ''for the purpose of collaborating on production of intelligence product and terrorist acts'' and replace with ''for the purpose of producing intelligence products and preventing or investigating terrorist acts.''

Add a new fourth paragraph ''To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.''

* * * * *

A0195–2c USACIDC DoD

SYSTEM NAME:

DoD Criminal Investigation Task Force (CITF) Files

SYSTEM LOCATION:

U.S. Army Criminal Investigation Command, Criminal Investigation Task Force, 6010 6th Street, Fort Belvoir, VA 22060–5506.

Decentralized segments are located at DoD Criminal Investigation Task Force (CITF) field offices and resident offices worldwide. Official mailing addresses are published as an appendix to Army's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual involved in, or suspected of being involved in, war crimes or acts of terrorism affecting U.S. interests (*e.g.*, property located in or outside of the United States), U.S. nationals, and/or U.S. personnel.

Individuals who provide information that is relevant to the investigation, such as victims, witnesses, and those who report such crimes or acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, rank, date and place of birth, chronology of events; reports of investigation and criminal intelligence reports containing statements of witnesses, suspects, subject and agents; laboratory reports, polygraph reports, documentary evidence, physical evidence, summary and administrative data pertaining to preparation and distribution of reports; basis for allegations; modus operandi and other investigative information from Federal, State, and local investigative and intelligence agencies and departments; and similar relevant documents; names and personal identifiers of persons who have been subjects of electronic surveillance; agencies, firms, Army and Defense Department organizations which were the subjects or victims of war crimes investigations; and disposition of offenders, witness identification data, and relevant information pertaining to the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 821, Jurisdiction of Courts Martial not Exclusive, and 836, President May Prescribe Rules; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Pub. L. 107–40, Authorization for Use of Military Force Joint Resolution; Military Order of November 13, 2001, Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism; Army Regulation 195–2, Criminal Investigation Activities; and E.O. 9397 (SSN).

PURPOSE(S):

To conduct and exercise overall responsibility within the Department of Defense for all matters pertaining to the investigation of alleged war crimes and acts of terrorism committed against U.S. citizens, U.S. property or interests; used in judicial and adjudicative proceedings including litigation or in accordance with a court order; and reporting of statistical data to Department of Defense officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information concerning war crimes or acts of terrorism activities are disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing laws (such as provisions of the Status of Forces Agreements or Treaties), analyzing modus operandi, detecting organized criminal activities, or terrorist activities.

To the Department of State, the Department of Treasury, the Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Administration, U.S. Customs Service, the Bureau of Alcohol, Tobacco and Firearms, the Central Intelligence Agency, for the purpose of producing intelligence products and preventing or investigating terrorist acts. The distribution of investigative information is based on the Army's evaluation of the requesting agency needs and the relevance of the information to the use for which it is provided.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders and on electronic media.

RETRIEVABILITY:

By individual's name, Social Security Number and date and place of birth.

SAFEGUARDS:

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings employ alarms, security guards, and or rooms are security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in ''fail-safe'' system software with password-protected access. All records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Criminal Investigation Command, Criminal Investigation Task Force, 6010 6th Street, Fort Belvoir, VA 22060–5506.

NOTIFICATION PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Criminal Investigation Command, Criminal Investigation Task Force, 6010 6th Street, Fort Belvoir, VA 22060–5506.

For verification purposes, individuals should provide their full name, date and place of birth, current address, telephone numbers, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Criminal Investigation Command, Criminal Investigation Task Force, 6010 6th Street, Fort Belvoir, VA 22060–5506.

For verification purposes, individual should provide their full name, date and place of birth, current address, telephone numbers, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determination are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Suspects, witnesses, victims, DoD personnel, informants; various Department of Defense, federal, state, and local investigative agencies; departments or agencies of foreign governments; and any other individual or organization which may supply pertinent information.

EXEMPTION CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 05–16773 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy.

ACTION: Notice to Add Systems of Records; NM01500–10 Navy Training Management and Planning System (NTMPS).

SUMMARY: The Department of the Navy proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 23, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

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

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available: from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on August 16, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: August 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

NM01500–10

SYSTEM NAME:

Navy Training Management and Planning System (NTMPS).

SYSTEM LOCATION:

Naval Undersea Warfare Center Division (NUWC) Newport, Bldg 1259, Combat Control System Lab (CCSL), 1176 Howell St, Newport, RI 02841–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Navy Sailors; active and reserve duty Marines, and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), date of birth, professional qualifications and skills, training courses completed, certifications received, level of education, military awards received, duty assignments, language skills, and security clearance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to maintain a listing of training, education, and qualifications of Department of the Navy personnel for use by Manpower, Personnel and Training (MPT) managers. This system will also be used to provide projections of training resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

The NTMPS servers are located in a secure area at NUWC Newport. Access to the data marts will be controlled through user IDs and passwords. Passwords will be changed regularly. All data transferred including username/passwords will be encrypted. The interface server will be protected from attempts to penetrate the firewall through the existing NUWC controls. NTMPS users will be limited to viewing data approved by their command supervisor.

RETENTION AND DISPOSAL:

Records are destroyed once individual discontinues service with the Department of the Navy.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Education and Training Command (NETC), Code N631, 250 Dallas St., Pensacola, FL 32508–5220.

Naval Undersea Warfare Center (NUWC) Division Newport, Code 2232, Bldg 1171–2, 1176 Howell St., Newport, RI 02841–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Naval Education and Training Command, Code N631, 250 Dallas St., Pensacola, FL 32508–5220.

Written request should contain full name, current rate/rank, Social Security Number, status, branch of service, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to additional information about themselves contained in this system should address written inquiries to the Commander, Naval Education and Training Command, Code N631, 250 Dallas St., Pensacola, FL 32508–5220.

Written request should contain full name, current rate/rank, Social Security Number, status, branch of service, and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and from various other Privacy Act systems of records, such as N01080–1, Enlisted Master File; N01080–2, Officer Master File; N01500–3, and Student/Smart/VLS Records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–16666 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy.

ACTION: Notice To Delete Systems of Records; N05822–1 Yokusuka Prison Health and Comfort Items.

SUMMARY: The Department of the Navy is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 23, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 17, 2005.

Jeanette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

N05822–1

SYSTEM NAME:

Yokusuka Prison Health and Comfort Items (February 22, 1993, 58 FR 10782).

REASON:

The Yokusuka Prison Health and Comfort Program has been discontinued and all files have been destroyed.

[FR Doc. 05–16672 Filed 8–23–05; 8:45 am]

BILLING CODE 5001–06–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 23, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 2005.

Lee Eiden,

Team Leader, Information Policy and Standard Team, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision of a currently approved collection.

Title: FRSS on Internet Access in U.S. Public Schools: Fall 2005.

Frequency: Other: one time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 1200.

Burden Hours: 400.

Abstract: The Quick Response Information System consists of two survey system components—Fast Response Survey System for schools, districts, libraries and the Postsecondary Education Quick Information System for postsecondary institutions. This survey will go to 1200 public elementary and secondary school principals. It will provide current information about numbers of computers in schools and classrooms, how schools connect to the internet, and how schools control access to the internet, and teacher professional development in technology.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2863. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at *Kathy.Axt @ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–16826 Filed 8–23–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of Education Sciences; Meeting

AGENCY: National Board for Education Sciences; ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Board for Education Sciences. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for disability (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Mary Grace Lucier at (202) 219–2253 by August 26. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: September 6 and 7, 2005.

Time: September 6, 3 p.m. to 5 p.m.; September 7, 8:30 a.m. to 3:30 p.m.

Location: Room 100, 80 F St., NW, Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Designated Federal Official, National Board for Education Sciences, Washington, DC 20208. Tel.: (202) 219–2253; fax: (202) 219–1466; e-mail: *Mary.Grace.Lucier@ed.gov*.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding of applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews evaluates the work of the Institute. On September 6, the Board will meet from 3 to 5 p.m. to hear an update on the work of IES and a presentation of the proposed research priorities for FY 2006 by the Director.

On September 7, at 8:30 a.m. the Board will review the activities of the previous day and the present day's agenda. Starting at 8:45 a.m., the Board will review and discuss public comments on the IES research priorities. From 10:30 to noon the Board will consider its response to the priorities and take action on them. At 1 p.m. the Board will hold a presentation and discussion of a plan to examine the IES technical and peer review system, and at 2:15 p.m. the Board will conduct a retrospective on Board activities for 2005 and planning for 2006. Adjournment is scheduled for 3:30 p.m. Further meetings of the Board are scheduled for January 23 and 24, 2006, and May 8 and 9, 2006.

Records will be kept of all Board proceedings and will be available for public inspection at the office of the National Board for Education Sciences, 555 New Jersey Ave., NW, Washington, DC 20208.

Dated: August 18, 2005.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 05–16770 Filed 8–23–05; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0232; FRL–7732–4]

Procymidone; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide procymidone, and opens a public comment period on this document. EPA has reviewed the pesticide procymidone through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments must be received on or before October 24, 2005.

ADDRESSES: Comments, identified by docket identificaiton (ID) number OPP–2005–0232, 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: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: *fuller.demson@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0232. 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 from8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA

intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0232. 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–2005–0232. 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–2005–0232.

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–2005–0232. 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 part2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed the uses of procymidone, and on July 7, 2005, reached a tolerance reassessment decision for this pesticide. Procymidone is a fungicide used to treat wine grapes outside of the United States. A tolerance of 5 parts per million for wine grapes has been established, with no U.S. registrations, to permit the import of wine produced from procymidone treated grapes. Currently, procymidone exposures to the U.S. general population exist only through drinking imported wine made from procymidone treated grapes. Since there are no registered uses of procymidone in the U.S., no occupational, residential, or drinking water exposures are expected. EPA has not made a common mechanism of toxicity finding and therefore, has not assumed that procymidone has a common mechanism of toxicity with other substances for the purposes of this tolerance action.

The Agency is now issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for procymidone, known as a TRED, as well as related risk assessments and technical support documents. EPA developed the procymidone TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the procymidone tolerance included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like procymidone, which pose no risk concerns and require no risk mitigation. Once EPA assesses uses and risks for such pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the procymidone TRED.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Procymidone, however, poses no risks that require mitigation. The Agency therefore is issuing the procymidone TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for procymidone. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented.

B. What is the Agency's Authority for Taking this Action?

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 15, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–16685 Filed 8–23–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0206; FRL–7726–3]

Fipronil; 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–2005–0206, must be received on or before September 23, 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: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703 305–6502; e-mail address:*sibold.ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you 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 ID number OPP–2005–0206. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **''Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. 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.

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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select'' ''search,'' and then key in docket ID number OPP–2005–0206. 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–2005–0206. 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–2005–0206.

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–2005–0206. 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. 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: August 15, 2005.

Donald R. Stubbs,

Acting 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.

BASF Corporation

5F6948 and 2E6490

EPA has received a pesticide petition (5F6948) from BASF Corporation, P.O. Box 13528, 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 180.517 by establishing a tolerance for residues of mixture comprising fipronil, 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-(trifluoromethyl)sulfinyl]-1H-pyrazole-3-carbonitrile and its metabolites 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl) sulfonyl]-1H-pyrazole-3-carbonitrile and 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl)thio]-1H-pyrazole-3-carbonitrile and its photodegradate 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-(trifluoromethyl)]-1H-pyrazole-3-carbonitrile in or on the raw agricultural commodity corm vegetables (crop group 1-C at 0.04 parts per million (ppm), and indirect and inadvertent residues on wheat, grain at 0.005 and wheat, forage at 0.02 ppm and wheat, hay and straw at 0.03 ppm. EPA has received a pesticide petition 2E6490 from The Interregional Research Project No. 4 (IR-4), Technology Centre of New Jersey, Rutgers, the State University of New Jersey, 681 U.S. Highway 1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.517 by establishing a tolerance for residues of mixture comprising fipronil, 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-trifluoromethyl)sulfinyl]-1H-pyrazole-3-carbonitrile) and its metabolites 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl) sulfonyl]-1H-pyrazole-3-carbonitrile and 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl)thio]-H-pyrazole-3-carbonitrile and its photodegradate 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-(trifluoromethyl)]-1H-pyrazole-3-carbonitrile in or on the raw agricultural commodities onion (dry bulb), garlic, shallot (dry bulb) at 0.02 ppm. EPA has determined that the petition contains 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 metabolism of fipronil is adequately understood. Adequate data on the nature of the residues in both plant and animals, including identification of major

metabolites and degradates of fipronil, are available. In plants and animal the metabolism of fipronil proceeds via oxidation of the sulfoxide to yield sulfone and hydrolysis of nitrile to yield the amide. Fipronil and its sulfone and amide constitute greater than 75% of the identified residues in all studies. A limited amount of reduction of sulfoxide to yield the sulfide occurs in some cases. Further transformation of primary metabolites affords minor amounts of carboxylic acid, the amide and the 4-protopyrazole.

2. *Analytical method*. Validated analytical methods are available for detecting and measuring levels of fipronil and its metabolites in onion, dry bulb, potato (corm vegetables) and its processing fractions and wheat grain, forage, hay, and straw. The Method utilizes Capillary Gas Chromatography equipped with a Ni electron capture detector. The Limit of Quantitation (LOQ) for all potato matrices is 0.003 ppm for all analytes. The LOQ for onion is 0.005 for all analytes.

3. *Magnitude of residues*. Field trials were carried out in order to determine the magnitude of residue in potato. Field trials were conducted in the required regions. Field trials were carried out using the maximum label rate of 0.1 lbs active ingredient (a.i.) per acre applied in furrow followed by four sequential foliar applications at 0.05 lbs a.i. per acre. The results demonstrate that any residue present would originate from the in-furrow not the foliar applications. In addition a processing study was conducted on potatoes. Onion field trials were conducted in the required regions. The application was by seed treatment at 25 grams of active ingredient/kilogram (g a.i./Kg) of seed. Twelve field trials were conducted where wheat was planted following application to primary crops. Applications rates were 0.13 lbs a.i. per acre in-furrow for six corn trials and 0.2 lbs a.i. per acre foliar for six cotton trials.

B. Toxicological Profile

1. *Acute toxicity*. For technical fipronil:

Oral LD_{50}	Rat	LD_{50} = 97 mg/kg b.w.	category II/(moderately toxic)
Dermal LD_{50}	Rat	LD_{50} >2,000 mg/kg b.w. (HDT)	category III (slightly toxic)
Dermal LD_{50}	Rabbit	LD_{50} = 354 mg/kg b.w.	category II(moderately toxic)
Inhalation LC_{50}	Rat	LC_{50} = 0.39 mg/L	category II(moderately toxic)
Eye Irritation	Rabbit	slight irritation	category III
Skin Irritation	Rabbit	slight irritation	category IV
Skin Sensitization (Maximization Test)	Guinea pig	Not sensitizing	
Acute Neurotoxicity	Rat	NOAEL = 2.5 mg/kg/day (for general toxicity)	

2. *Genotoxicity*. Fipronil was negative in both *in vitro* and *in vivo* assays conducted to investigate gene mutations, DNA damage, and chromosomal aberrations.

3. *Reproductive and developmental toxicity*. The developmental toxicity NOELs in the rat and rabbit were 20 mg/kg/day (HDT) and 1 mg/kg/day (HDT), respectively. Maternal toxicity was observed in the rat at the HDT as evidenced by decreased body weight gain and food efficiency. In the rabbit, the maternal toxicity NOAEL was less than 0.1 mg/kg/day, based on reduced body weight gain and food efficiency at all dose levels tested. In a two-generation rat study, the NOEL for parental (systemic) toxicity was 3 ppm (0.26 mg/kg/day for both sexes combined), based on increased weight of the thyroid glands and liver in males and females, decreased weight of the pituitary gland in females, and an increased incidence of follicular epithelial hypertrophy in females at 30 ppm. The NOEL for reproductive toxicity was 30 ppm (2.64 mg/kg/day for both sexes combined), based on clinical signs of toxicity in pups, decreased litter size, decreased pup body weights, decreased mating, decreased fertility index, reduced pre- and postnatal survival, and delays in physical development at 300 ppm (26.03 and 28.40 mg/kg/day for males and females, respectively).

In a developmental neurotoxicity study in the rat, the NOAEL for maternal toxicity was 10 ppm (0.91 mg/kg/day), based on decreased body weights and body weight gain at 200 ppm (HDT; 15 mg/kg/day). Considerable maternal toxicity at the HDT prevented adequate neurotoxicity evaluation of pups at this dose level. There was no evidence of neurotoxicity at 10 ppm (0.91 mg/kg/day), which was the NOAEL for developmental neurotoxicity. The NOAEL for general developmental toxicity was 0.5 ppm (0.05 mg/kg/day), based on systemic effects consisting of decreases in pup weights during lactation and increases in time of preputial separation in males at 10 ppm.

4. *Subchronic toxicity*. The NOAEL for systemic toxicity in rat was 5 ppm (0.35 mg/kg/day for both sexes combined), based on alterations in serum protein values and increased weight of the liver and thyroid at 30 ppm (1.93 and 2.28 mg/kg/day for males and females, respectively). The NOAELs in the dog were 2 and 0.5 mg/kg/day for male and female, respectively, based on clinical signs of toxicity in males at 10 mg/kg/day and clinical signs of toxicity and decreased body weight gain in females at 2 mg/kg/day. The NOAEL for mice was 10 ppm (1.27 and 1.72 mg/kg/day for males and females, respectively), based on a possible decreased body weight gain at 25 ppm (3.2 and 4.53 mg/kg/day for males and females, respectively). A repeated dose dermal study in the rabbit had a systemic NOAEL of 5 mg/kg/day, based on decreased body weight gain and food consumption at 10 mg/kg/day, and a dermal irritation NOEL of 10.0 mg/kg/day (HDT).

In a subchronic neurotoxicity study in rats, the NOEL was 5 ppm (0.301 and 0.351 mg/kg/day for males and females, respectively), based on results of the functional observational battery (FOB) at 150 ppm (8.89 and 10.8 mg/kg/day for males and females, respectively).

5. *Chronic toxicity*. The NOAEL for systemic toxicity in a 1–year feeding study in the dog was 0.3 mg/kg/day in females and 1 mg/kg/day in males,

based on clinical signs of neurotoxicity at 1 and 2 mg/kg/day in females and males, respectively. The NOAEL for systemic toxicity in mice was 0.5 ppm (0.06 mg/kg/day) based on decreased body weight gain, decreased food conversion efficiency in males, increased liver weights, and liver histopathology at 10 ppm (1.3 mg/kg/day). Fipronil was not carcinogenic when administrated to mice at dose levels up to 60 ppm. The NOAEL in a 2–year dietary study in the rat was 0.5 ppm (0.019 and 0.025 mg/kg/day for males and females, respectively) based on clinical signs of toxicity and alterations in clinical chemistry and thyroid parameters at 1.5 ppm (0.059 and 0.078 mg/kg/day for males and females, respectively). The EPA's Health Effects Division Carcinogenicity Peer Review Committee classified fipronil in Group C - Possible Human Carcinogen, based on thyroid tumors observed in rats at 300 ppm (HDT). Mechanistic data indicate that these tumors are related to a disruption in the thyroid-pituitary status and are specific to the rat. In addition, there was no apparent concern for mutagenic activity. Thus, it was recommended that RfD methodology, i.e. non-linear or threshold, be used for the estimation of human risk.

6. *Animal metabolism*. The metabolism of fipronil is adequately understood. Adequate data on the nature of residues in both plants and animals, including identification of major metabolites and degradates of fipronil, are available. In plants and animals the metabolism of fipronil proceeds via oxidation of the sulfoxide to yield sulfone and hydrolysis of nitrile to yield the amide. Fipronil and its sulfone and amide constitute greater than 75% of the identified residues in all studies. A limited amount of reduction of sulfoxide to yield the sulfide occurs in some cases. Further transformation of the primary metabolites affords minor amounts of the carboxylic acid, the amide and the 4-protiopyrazole.

7. *Metabolite toxicology*. MB46513 photodegradate acute oral toxicity:

Oral LD_{50}	Rat LD_{50} = 16 mg/kg b.w.	category I (highly toxic)
Dermal LD_{50}	Rabbit LD_{50} > 2,000 mg/kg b.w. (HDT)	category III (slightly toxic)

i. *Acute neurotoxicity*. The NOEL was 2 mg/kg, based on decreases in body weight gain and food consumption in males and females during the week following treatment, decreases in locomotor activity, hind-limb splay and rectal temperature 6–hour post dosing in males and females, and decreases in the proportion of males with an immediate righting reflex on days 7 and 14, at 12 mg/kg/day.

In a rat developmental toxicity study, the NOEL was 1 mg/kg/day, based on the slight increase in fetal and litter incidence of reduced ossification of several bones at 2.5 mg/kg/day.

ii. *Subchronic toxicity*. The NOAEL in the rat was 3 ppm (0.18 and 0.21 mg/kg/day in males and females, respectively), based on clinical signs of toxicity in both sexes and decreased body weight and body weight gain in males at 10 ppm. The NOEL for the mouse was 0.5 ppm (0.08 mg/kg/day), based on the aggressive and irritable behavior with increased motor activity in males at 2 ppm. The NOEL for the dog was 9.5 ppm (0.29 mg/kg/day), based on behavioral changes in females at 35 ppm (1.05 mg/kg/day).

The rat chronic/carcinogenicity study was negative for carcinogenicity. The LOAEL for females was 0.5 ppm (0.032 mg/kg/day), based on clinical signs of toxicity. There was no NOEL established. For males, the NOAEL was 2 ppm (0.098 mg/kg/day), based on clinical signs of toxicity, and stomach and lung histopathology at 10 ppm (0.497 mg/kg/day). No thyroid effects are observed in any of the rat, mouse or dog studies with MB46513, supporting the conclusion that there is no concern for cancer due to exposure to MB46513.

8. *Endocrine disruption*. Data from the reproduction/ developmental toxicity and short- and long-term repeated dose toxicity studies with fipronil in the rat, rabbit, mouse, or dog, do not suggest any endocrine disruption activity. This information is based on the absence of any treatment-related effects from the histopathological examination of reproductive organs as well as the absence of possible effects on fertility, reproductive performance, or any other aspect of reproductive function, or on growth and development of the offspring. Evidence of offspring toxicity was observed only in the presence of significant parental toxicity. Fipronil disrupts the thyroid-pituitary axis. However, mechanistic studies have demonstrated that fipronil decreases thyroid hormone levels in long-term studies via increased clearance, rather than a direct effect on the thyroid. Concerns related to long-term exposure of fipronil are addressed in human risk estimates, as the chronic RfD (0.0002 mg/kg/day) is based on endpoints that include thyroid hormone related effects in rats.

C. Aggregate Exposure

1. *Dietary exposure*. An assessment was conducted to determine the acute and chronic exposure of all population sub-groups to residues of fipronil. Tolerance values have previously been established and are listed in 40 CFR 180.517.

This analysis included all crops with established tolerance values and the proposed new crops of white potato, sweet potato, onion bulb, garlic, shallot bulb and the inadvertent residue tolerance on wheat grain. The dietary exposure assessment for crops with established tolerances was conducted by the U.S. Environmental Protection Agency in 2001 (PP# 7F04832. Fipronil in/on Cotton. HED Risk Assessment. Barcode D248827; PC Code 129121; Case 288765 ; submission S547814). Using these dietary exposure values is conservative because the registration for fipronil on cotton was withdrawn, and the dietary exposure assessment conducted by HED included all currently registered uses and the proposed cotton use. Using the HED exposure values is conservative (overestimates actual exposure) because the cotton use and all requested modifications to existing tolerances were included in the dietary exposure assessment.

The dietary exposure assessment for white potato, sweet potato, onion bulb, garlic, and shallot bulb were conducted using tolerance level residues, default processing factors, and 100% crop treated factors. These assumptions are conservative because it assumes all commodities will be at tolerance level and 100% of the crop has been treated with fipronil. The dietary exposure assessment for the inadvertent residues in wheat grain was conducted using tolerance level residues, default processing factors, and a 7% crop treatment factor. The U.S. EPA used a 7% crop treatment factor for corn in the dietary exposure assessment. The tolerance for wheat grain is from inadvertent residues that would occur when wheat is planted following a fipronil treatment of corn. Therefore, the 7% crop treatment factor applies to wheat inadvertent residues.

The dietary exposure assessments were conducted using the Dietary Exposure Evaluation Model software with Food Commodity Intake Database (DEEM-FCID).

i. *Food*—a. *Acute dietary exposure assessment*. The acute population adjusted dose (aPAD) used was 0.025 mg/kg bw/day. Using the exposure

assumptions discussed above, the maximum fipronil acute dietary exposure from food is 11% aPAD. The results of the acute dietary assessment are presented in Table 1.

TABLE 1.—COMBINATION OF THE ACUTE DEEMTM DIETARY ANALYSIS AT 95TH PERCENTILE FOR FIPRONIL CONDUCTED BY THE US EPA FOR EXISTING USES AND BASF FOR THE USE ON WHITE AND SWEET POTATOES

Subgroups	Exposure (mg/kg bw/day)	% aPAD[a]
U.S. Population	0.001495	6
All Infants (<1 year old)	0.002502	10
Children (1–6 years old)	0.002859	11
Children (7–12 years old)	0.001814	7
Females (13–50 years old)	0.0009342	4
Males (13–19 years old)	0.001332	5
Males (20+ years old)	0.000962	4
Seniors (55+ years old)	0.0007642	3

[a] The aPAD = 0.025 mg/kg bw/day.

b. *Chronic dietary exposure assessment.* The chronic population adjusted dose (cPAD) used was 0.0002 mg/kg bw/day. Using the exposure assumptions discussed above, the maximum fipronil chronic dietary exposure from food is 56% cPAD. The results of the chronic dietary assessment are presented in Table 2.

TABLE 2.—COMBINATION OF THE CHRONIC DEEM ™ DIETARY ANALYSIS FOR FIPRONIL CONDUCTED BY THE U.S. EPA FOR EXISTING USES AND BASF FOR THE USE ON WHITE AND SWEET POTATOES

Subgroups	Exposure (mg/kg bw/day)	% cPAD[a]
U.S. Population	0.0000546	27
All Infants (< 1 year old)	0.0000685	34
Children (1–6 years old)	0.0001114	56
Children (7–12 years old)	0.0000738	37
Females (13–50 years old)	0.0000420	21
Males (13–19 years old)	0.0000619	31
Males (20+ years old)	0.0000494	25
Seniors (55+ years old)	0.0000425	21

[a] The cPAD = 0.0002 mg/kg bw/day.

ii. *Drinking water.* The drinking water values used for comparison to the DWLOC (Drinking Water Level of Comparison) can be calculated from model estimates or actual monitoring data. When modeling was conducted, the currently registered corn use resulted in the highest predicted estimated water concentrations. If monitoring data is available it can be used instead of model predictions. A drinking water monitoring study for fipronil and relevant metabolites in surface water from the corn growing regions has beenconducted (MRID 45526101). Therefore, these actual measured drinking water values will be used in the drinking water assessment. The ground water values model by the EPA when the cotton use was examined will also be used for comparison. Based on the tier I screening model SCI-GROW (screening concentration in ground water), the acute ground water value will not exceed 0.061 ppb (0.032 µg/L for fipronil, 0.012 µg/L for MB46136, 0.016 µg/L for MB46513, and 0.001 µg/L for MB45950). This value of 0.061 ppb is also used for chronic ground water comparisons.

In the drinking water monitoring study, water samples were collected from 12 municipal water treatment facilities. The water treatment facilities were selected based on the source of water and the previousdocumented use of fipronil in the watershed area. Raw and finished water samples were collect at each water treatment site. The samples were collected on regular intervals between April and August. The water samples wereanalyzed for firponil and metabolites: MB45950, MB46136, and MB46513. The LOQ for the method was 10 parts per trillion (ppt) and the LOD was 4 ppt. No residues were detected in any of the finished water samples and no confirmed fipronil-related residues were found in any of the raw samples. This study showed that the use of fipronil in corn production does not pose a risk to surface drinking water.

a. *Acute aggregate exposure and risk (food and water).* The acute dietary risk associated with the existing fipronil uses and the proposed use of white and sweet potatoes does not exceed a level of concern. The estimated exposure at the 95th percentile uses ≤ 11% of the aPAD (Table 1). The surface water and ground water estimated concentrations were used to compare to the DWLOC. The estimated water concentrations are less than the calculated DWLOC (Table 3). Therefore, it can be concluded with reasonable certainty that residues of fipronil and metabolites in drinking water do not contribute significantly to the acute aggregate human health risk.

TABLE 3.—ACUTE AGGREGATE EXPOSURE FOR THE USE OF FIPRONIL ON WHITE POTATOES, SWEET POTATOES, AND ALL EXISTING USES

Population Subgroup	aPAD mg/kg/day	Dietary Exposure[1], mg/kg/day	Allowable Drinking Water Exposure[2], mg/kg/day	DWLOC, ppb	Surface Water[3], ppb	Ground Water EEC, ppb
U.S. Population	0.025	0.001495	0.023505	823	0.04	0.061
All Infants (< 1 year old)	0.025	0.002502	0.022498	225	0.04	0.061

TABLE 3.—ACUTE AGGREGATE EXPOSURE FOR THE USE OF FIPRONIL ON WHITE POTATOES, SWEET POTATOES, AND ALL EXISTING USES—Continued

Population Subgroup	aPAD mg/kg/day	Dietary Exposure[1], mg/kg/day	Allowable Drinking Water Exposure[2], mg/kg/day	DWLOC, ppb	Surface Water[3], ppb	Ground Water EEC, ppb
Children (1-6 years old)	0.025	0.002859	0.022141	221	0.04	0.061
Children (7-12 years old)	0.025	0.001814	0.023186	232	0.04	0.061
Females (13-50 years old)	0.025	0.0009342	0.024066	722	0.04	0.061
Males (13-19 years old)	0.025	0.001332	0.023668	828	0.04	0.061
Males (20+ years old)	0.025	0.000962	0.024038	841	0.04	0.061
Seniors (55+ years old)	0.025	0.0007642	0.024236	848	0.04	0.061

[1] The dietary exposure values are from Table 1.
[2] Allowable Drinking Water Exposure (mg/kg/day) = aPAD (mg/kg/day) - Acute Dietary Exposure (mg/kg/day).
[3] The surface water concentration is the sum of the LOQ for fipronil, and metabolites: MB45950, MB46136, and MB46513 (0.04 µg/L = 0.01 + 0.01 + 0.01 + 0.01).

b. *Short- and intermediate-term aggregate exposure and risk (food, water and residential exposure).* Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure from food and water. Aggregation of systemic oral, dermal and inhalation exposure from the residential use is not appropriate due to differences in the toxicity endpoints observed between oral (neurotoxicity and alterations in clinical chemistry and thyroid parameters), dermal (decrease in body weight gain and food consumption) and inhalation (developmental effects including decreases in pup weights during lactation and increases in time of preputial separation) routes. Also, there is no significant post-application exposure to adults. However, post-application exposure to children is included in the exposure assessment.

Post-application exposure of children can occur from three scenarios: (1) Incidental ingestion of fipronil pellets or granules; (2) incidental ingestion of soil (hand to mouth) from fipronil treated residential areas; and (3) incidental ingestion (hand to mouth) of fipronil from treated pets. EPA's OPP Health Effects Division believes that exposure from scenario 1 is episodic and is only a one time occurrence and episodic exposure is not aggregated with food and water. Exposure from scenario #3 (3×10^{-5} mg/kg/day) is greater that scenario #2 (1.2×10^{-6} mg/kg/day) and therefore this exposure will be aggregated with food and water exposure.

The short- and intermediate-term exposure risk assessment was only determined for the most highly exposed subpopulation which is children 1-6 years old (Table 4). The target MOE for short- and intermediate- term exposure risk assessment is 300 and therefore, the maximum allowable exposure is 0.00033 mg/kg bw/day (LOAEL, 0.1/300 safety factor). The short- and intermediate term MOE for children 1-6 years of age is 707 which is greater than 300. Also, the calculated DWLOC is greater than the predicted chronic surface and ground water concentrations. Therefore, taking into account all registered uses and the white and sweet potato uses, it can be concluded with reasonable certainty that residues of fipronil and metabolites in drinking water will not result in short- and intermediate-term aggregate human health risks.

TABLE 4.—SHORT- AND INTERMEDIATE-TERM AGGREGATE EXPOSURE AND DWLOC CALCULATIONS FOR CHILDREN 1–6 YEARS OLD FOR THE USE OF FIPRONIL ON WHITE POTATOES, SWEET POTATOES, AND ALL EXISTING USES

Max Exposure[1], mg/kg/day	Chronic Food Exposure[2], mg/kg/day	Residential Exposure[3], mg/kg/day	Short-and Intermediate-Term Aggregate MOE(food and Residential)[4]	Maximum Water Exposure, mg/kg/day[5]	DWLOC, ppb	Surface Water[6], ppb	Ground Water EEC, ppb
0.00033	0.0001114	0.00003	707	0.0001886	1.886	0.04	0.061

[1] Maximum Exposure (mg/kg/day) = LOAEL / Targer MOE (0.1 / 300).
[2] Chronic food exposure for children 1–6 years of age is from Table 2.
[3] Residential exposure is for incidental ingestion (hand to mouth) of fipronil from treated pets.
[4] Aggregater MOE = [LOAEL/(chronic food exposure + residential exposure)].
[5] ;Maximum water exposure (mg/kg/day) = Target maximum exposure - (Food exposure and Residential exposure).
[6] The surface water concentration is the sum of the LOQ for fipronil, and metabolites: MB45950, MB46136, and MB46513 (0.04 µg/L = 0.01 + 0.01 + 0.01 + 0.01).

c. *Chronic aggregate exposure and risk (food and water).* The chronic dietary risk associated with the existing fipronil uses and the proposed use of white and sweet potatoes does not exceed a level of concern. The estimated exposures for all subpopulations are ≤ 56% of the cPAD (Table 2). The surface water and ground water estimated

concentrations were used to compare to the DWLOC. The estimated water concentrations are less than the calculated DWLOC (Table 5). Therefore, it can be concluded with reasonable certainty that residues of fipronil and metabolites in drinking water do not contribute significantly to the chronic aggregate human health risk.

TABLE 5.—CHRONIC AGGREGATE EXPOSURE FOR THE USE OF FIPRONIL ON WHITE POTATOES, SWEET POTATOES, AND ALL EXISTING USES

Population Subgroup	cPAD,/mg/kg/day	Dietary Exposure [1], mg/kg/day	Allowable Drinking Water Exposure [2], mg/kg/day	DWLOC, ppb	Surface Water [3], ppb	Ground Water EEC, ppb
U.S. Population	0.0002	0.0000546	0.0001454	5.09	0.04	0.061
All Infants (< 1 year old)	0.0002	0.0000685	0.0001315	1.32	0.04	0.061
Children (1–6 years old)	0.0002	0.0001114	0.0000886	0.89	0.04	0.061
Children (7–12 years old)	0.0002	0.0000738	0.0001262	1.26	0.04	0.061
Females (13–50 years old)	0.0002	0.0000420	0.0001580	4.74	0.04	0.061
Males (13–19 years old)	0.0002	0.0000619	0.0001381	4.83	0.04	0.061
Males (20+ years old)	0.0 002	0.0 000494	0.000 1506	5. 27	0.04	0.061
Seniors (55+ years old)	0.0002	0.0000425	0.0001575	5.51	0.04	0.061

[1] The dietary exposure values are from Table 2.
[2] Allowable Drinking Water Exposure (mg/kg/day) = aPAD (mg/kg/day) - Acute Dietary Exposure (mg/kg/day).
[3] The surface water concentration is the sum of the LOQ for fipronil, and metabolites: MB45950, MB46136, and MB46513 (0.04 µg/L = 0.01 + 0.01 + 0.01 + 0.01)]

2. *Non-dietary exposure*. The residential exposure for fipronil products was assessed by the U.S. EPA in the cotton risk evaluation in 2001.

i. *Pet products*. The residential exposure for the Frontline® pet products was assessed. The residential exposure for the Frontline® pet products was determined based on the following submitted studies: (1) Dermal and Inhalation Exposure of Commercial Pet Groomers During the Application of Frontline® Spray Treatment (MRID #44433302), (2) Dermal Exposure of Commercial Pet Groomers During the Application of Frontline® and Top Spot® (MRID 44433303), and four studies examining the dislodgeable residues of fipronil following the spray and spot treatment application to dogs and cats (MRID 4443330–09). Based on these studies, HED determined the dermal and inhalation exposure for residential applicators were 3.0×10^{-3} mg/kg bw/day and 1.78×10^{-6} mg/kg bw/day, respectively. The non-dietary, oral (hand to mouth) was estimated to be no greater than 3.0×10^{-5} mg/kg bw/day. The post-application dermal exposure for toddlers was estimated to be 1.0×10^{-3} mg/kg bw/day. The MOEs for all exposure scenarios evaluated were greater than 1500.

ii. *Fire ant products*. The applicator exposure was determine using the ''Draft Standard Operating Procedures for Residential Exposure'' (December 18, 1997). The greatest homeowner applicator exposure was calculated from the application of the granular product with a drop spreader. The average daily dose for dermal and inhalation exposure were 6.0×10^{-4} mg/kg bw/day and 1.3×10^{-6} mg/kg bw/day, respectively. The MOEs for all exposure scenarios were ≥ 8,000.

Post-application from the fire ant granular products can occur from dermal exposure and ingestion of granules from treated soil and/or ingestion of treated soil by children. Based on a submitted dislodgeable foliar residue study (MRID 44506901), HED concluded that fipronil cannot be dislodged from treated turf and post-application exposure from turf will not occur. HED calculated exposure to children from the ingestion of granules in the treated area to be 2.8×10^{-3} mg/kg bw/day which resulted in a MOE of 890. The post-application exposure to children from ingestion of treated soil was calculated to be 1.2×10^{-6} mg/kg bw/day which resulted in a MOE of 83,000.

HED concluded that there are no risk concerns for fipronil from the residential uses.

D. Cumulative Effects

Section 408(b)(2)(D)(v) 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.

The EPA is currently developing methodology to perform cumulative risk assessments. At this time, there are no available data to determine whether fipronil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment.

E. Safety Determination

1. *U.S. population*. Based on this risk assessment, BASF concludes that there is a reasonable certainty that no harm will result to the general population from the aggregate exposure to fipronil.

2. *Infants and children*. Based on this risk assessment, BASF concludes that there is a reasonable certainty that no harm will result to infants or children from the aggregate exposure to fipronil residues.

F. International Tolerances

The following maximum residue levels (MRLs) have been established by the Codex Alimentarius Commission (CODEX) for fipronil residues on the following plant commodities: banana, 0.005 mg/kg; barley 0.002 mg/kg; cabbage, head, 0.02 mg/kg; flowerhead brassicas, 0.02 mg/kg; maize 0.01 mg/kg; maize fodder 0.1 mg/kg; maize forage 0.1; oats, 0.002 mg/kg; potato 0.02 mg/kg; rice 0.01 mg/kg; rice, straw and fodder, dry, 0.2 mg/kg; rye 0.002 mg/kg; sugar beet 0.2 mg/kg; sugar beet leaves

or tops, 0.2 mg/kg; sunflower seed, 0.002 mg/kg; triticale, 0.002 mg/kg; wheat 0.002 mg/kg.

The following maximum residue levels (MRLs) have been established by the Codex Alimentarius Commission (CODEX) for fipronil residues on the following animal commodities: cattle, kidney 0.02 mg/kg; cattle liver 0.1 mg/kg; cattle meat 0.05 mg/kg; eggs 0.02 mg/kg; poultry meat 0.01 mg/kg; poultry, edible offal, 0.02 mg/kg.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0212; FRL–7728–3]

Emamectin; 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–2005–0212, must be received on or before September 23, 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: Thomas Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address:*harris.thomas@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 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–2005–0212. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. 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.

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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are

submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0212. 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–2005–0212. 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–2005–0212.

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–2005–0212. 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. 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: August 9, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Syngenta Crop Protection, 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.

Syngenta Crop Protection

PP 3F6574

EPA has received a pesticide petition (3F6574) from Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 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 tolerances for residues of emamectin benzoate, 4'-epi-methylamino- 4'-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4'-epi-methylamino-4'-deoxyavermectin B_{1a} and a maximum of 10% 4'-epi-methlyamino-4'deoxyavermectin B_{1b} benzoate), and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide in or on the raw agricultural commodities pome fruit at 0.02 parts per million (ppm).

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of emamectin benzoate in plants has been studied and the nature of the residue has been determined in lettuce, cabbage, and sweet corn. The major portion of the residue is parent compound and its delta 8,9-photoisomer. The metabolism of emamectin has also been investigated in goats and poultry to characterize the fate of residues that may be present in animal feed items.

2. *Analytical method*. Adequate analytical methods (High Production Liquid Chromatography -fluorescence methods) are available for enforcement purposes.

3. *Magnitude of residues*. The appropriate number of residue trials has been conducted for the representative commodities of the pome fruit crop group (Crop Group 11). Those representative commodities are apples and pears. These trials were conducted in the major U.S. growing areas for these crops. Processing studies were conducted to provide wet apple pomace and juice for analysis and to determine if a tolerance in these commodities is necessary.

B. Toxicological Profile

A full description of the studies describing the toxicity, animal metabolism, metabolite toxicology, and endocrine disruption of emamectin benzoate can be found in the posting for its first tolerances in the **Federal Register**. (64 FR 27192–27200, May 19, 1999).

C. Aggregate Exposure

1. *Dietary exposure*. A Tier III acute and chronic dietary exposure evaluation was made using the Dietary Exposure Evaluation Model (DEEM™, version 7.76 from Exponent. Empirically derived processing studies for apple juice (0.27X), apple wet pomace (3.79X), cottonseed meal (0.12X), cottonseed oil (0.43X), tomato puree (0.32X), and tomatoes after washing (0.53X) were used in these assessments. The apple juice processing factor was used as a surrogate for pear juice; all other processing factors used DEEM™ defaults. All consumption data for these assessments were taken from the USDA's Continuing Survey of Food Intake by individuals (CSFII) with the 1994–96 consumption database and the Supplemental CSFII children's survey (1998) consumption database. These exposure assessments included all registered and pending uses on crops, including leafy vegetables (crop group 4), head and stem Brassica vegetables (crop group 5A), Brassica leafy vegetables (crop group 5B), fruiting vegetables (crop group 8), pome fruit (crop group 11), cotton, and turnip tops. Secondary residues in animal commodities were estimated based on theoretical worst-case, yet nutritionally adequate, animal diets and transfer information from feeding studies.

i. *Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerances, Syngenta Crop Protection has estimated aggregate exposure from all crops for which tolerances are established or proposed. These assessments utilized residue data from field trials where emamectin benzoate was applied at the EPA-approved maximum use rate and samples were harvested at the minimum pre-harvest interval to maximize anticipated residues. Percent of crop treated values were estimated based upon economic, pest and competitive pressures. The values used in these assessments were: Turnip tops 100%, celery 100%, Brassica vegetables 100%, tomatoes 11%, head lettuce 52%, leafy vegetables 5.9%, peppers 20%, cotton 2.3%, and pome fruit 35%.

a. *Acute exposure*. An acute reference dose (aRfD) for emamectin benzoate of 0.00025 milligrams/kilogram body weight/day (mg/kg bwt/day) for infants, children, and females 13 years and older was based upon a 0.075 mg/kg bwt/day NOAEL from a 15–day neurotoxicity study in mice, using an uncertainly factor of 100X. An additional Food Quality Protection Act (FQPA) safety factor of 3X was also applied. For the purpose of aggregate risk assessment, the exposure value was expressed in terms of margin of exposure (MOE), which was calculated by dividing the no observable effect level (NOAEL) by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the acute reference dose (% aRfD). Acute exposure to the most exposed sub-population (children 1 and 2 years old) resulted in a MOE of 403 (74% of the aRfD of 0.00025 mg/kg bwt/day). Since the benchmark MOE for this assessment was 300, and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from dietary (food) exposure to residues arising from the current uses and the proposed pome fruit use for emamectin benzoate.

b. *Chronic exposure*. A chronic reference dose (cRfD) for emamectin benzoate of 0.000083 mg/kg bwt/day for infants, children, and females 13 years and older was based upon a 0.075 mg/kg bwt/day NOAEL from a 15–day neurotoxicity study in mice, using an uncertainly factor of 100X. An FQPA safety factor of 3X was also applied, plus an additional 3X safety factor for use of a toxicology study of short duration. The emamectin benzoate Tier III chronic dietary exposure assessment was based upon residue field trial results. For the purpose of aggregate risk assessment, the exposure values were expressed in terms of MOE, which was calculated by dividing the no observable effect level (NOAEL) by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the reference dose %RfD. Chronic exposure to the most exposed sub-population (children 1 and 2 years old) resulted in a MOE of 4,411 (21% of the cRfD of 0.000083 mg/kg bwt/day). Since the benchmark MOE for this assessment was 900, and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from dietary (food) exposure to residues arising from the current and proposed uses for emamectin benzoate.

ii. *Drinking water*—a. *Chronic exposure*. The estimated maximum concentrations of emamectin benzoate in surface and ground water are 0.02 parts per billion (ppb), (Pesticide Root Zone Model/Exposure Modeling System (PRZM/EXAMS)) and 0.0005 ppb (screening concentration in ground water (SCI-GROW)), respectively. The chronic PAD for emamectin benzoate is 0.000083 mg/kg bwt/day for the females 13+ years, infants' and children's subgroups and 0.00025 mg/kg bwt/day for all other population subgroups.

From the chronic dietary exposure analysis, the highest exposure estimate of 0.000017 mg/kg bwt/day was determined for the children's (1–2 years old) subgroup. Based on EPA's ''Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments'' document (December 2, 1997), chronic drinking water levels of comparisons (DWLOCs) for emamectin benzoate were calculated to be 0.7 ppb for the children's (1–2 years old) subgroup. Based on this analysis, emamectin benzoate estimated environmental concentrations (EECs) do not exceed the calculated chronic DWLOC.

b. *Acute exposure.* The estimated maximum concentrations of emamectin benzoate in surface and ground water are 0.1 ppb PRZM/EXAMS and 0.0005 ppb SCI-GROW, respectively. The acute population adjusted dose (aPAD) for emamectin benzoate is 0.00025 mg/kg bwt/day for the females 13+ years, infants' and children's subgroups and 0.00075 mg/kg bwt/day for all other population subgroups. From the acute dietary exposure analysis, the highest acute food exposure from the uses of emamectin benzoate was 0.000186 mg/kg/day (children 1–2 years old) at the 99.9th percentile of exposures. Using this information, acute DWLOC for emamectin benzoate was calculated to be 0.6 ppb for the children's (1–2 years old) subgroup. Based on this analysis, emamectin benzoate EECs do not exceed the calculated acute DWLOC.

2. *Non-dietary exposure.* No products containing emamectin benzoate are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for any non-food use. No significant non-dietary, non-occupational exposure is anticipated.

3. *Aggregate Exposure.* Based on the completeness and reliability of the toxicity data supporting these petitions, Syngenta believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues arising from all current and proposed emamectin benzoate uses, including anticipated dietary exposure from food, water, and all other types of non-occupational exposures.

D. Cumulative Effects

Emamectin benzoate is synthetically derived from avermectin, which is derived from *Streptomyces avermitilus*. *Streptomyces avermitilus* produces the insecticide avermectin, which is a mixture of two homologs, avermectin B_{1a} and B_{1b}, each having equal biological activity. Currently, the only other member of this class that is registered for agricultural uses is abamectin. Abamectin and ivermectin are structurally similar to emamectin. EPA does not have, at this time, data to determine whether emamectin benzoate has a common mechanism of toxicity with other substances or the means to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based upon a common mechanism of toxicity, emamectin benzoate does not appear to produce a toxic metabolite that is produced by other substances. For the purpose of this tolerance action; therefore, Syngenta has assumed that emamectin benzoate does not have a mechanism of toxicity common to these other substances.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* Exposure to emamectin benzoate residues in food will occupy no more than 74% of the aPAD for the most sensitive population subgroup (children 1–2 years old). Residue values used for these dietary risk assessments were from field trials and did incorporate percent of crop treated information. Acute dietary exposure estimates were determined at the 99.9th percentile of acute exposures. Estimated concentrations of emamectin residues in surface and ground water are lower than the DWLOC. Therefore, Syngenta does not expect acute aggregate risk to emamectin benzoate residues from food and water sources to exceed the level of concern for acute dietary exposure.

ii. *Chronic risk.* The chronic dietary exposure to emamectin residues in food is no more than 21% for the most sensitive population subgroup (children 1–2 years old). Residue values used for these dietary risk assessments were from field trials and did incorporate percent of crop treated information, as indicated above. The estimated concentrations of emamectin residues in surface and ground water are lower than the DWLOC. The expected chronic aggregate risk to emamectin residues from food and water sources would not be expected to exceed the level of concern for chronic dietary exposure.

Syngenta has considered the potential aggregate exposure from food, water and non-occupational exposure routes and concluded that aggregate exposure is not expected to exceed 100% of the acute and chronic reference doses. Thus there is a reasonable certainty of no harm to infants and children from the aggregate exposure to residues of emamectin benzoate in food and water.

2. *Infants and children.* For emamectin benzoate, the Agency has determined that the 10x safety factor for the protection of infants and children should be reduced to 3x. The rationale for reducing the FQPA Safety Factor is based on the fact that no increased susceptibility was demonstrated in rats or rabbits following *in utero* and/or postnatal exposure to emamectin.

Although, increased susceptibility was demonstrated in a developmental neurotoxicity study in rats, the EPA determined that the 10x factor should be reduced to 3x based on the following weight-of-the-evidence considerations in the developmental neurotoxicity study:

i. The LOAEL was based on a single effect/end point (i.e., decrease in open field motor activity).

ii. The effect at the LOAEL was seen only on postnatal day 17 and was not seen either on earlier day 13 or later day 21 evaluations whereas at the high dose (3.6/2.5 mg/kg/day), this effect was seen on postnatal days 13 and 17;

iii. The effect at the LOAEL was not accompanied with other toxicity whereas at the high dose, tremors and hind limb splay were also seen.

iv. The decreased performance was lower only when compared to the concurrent control, and;

v. There were limited (only 2 studies) historical control data available for comparison.

Syngenta believes that the clinical signs of avermectin-family based neurotoxicity seen in neonatal rats are unlikely to be useful predictors of human risk. Young rats are considerably more sensitive to avermectin-type compounds than either adult rats or humans and other primates. (In neonatal rats, unlike humans, the P-glycoprotein levels are only a small fraction of the levels seen in adult rats.) Moreover, data from clinical experience with ivermectin, a related human drug, and studies on ivermectin and abamectin, a related pesticide, demonstrate that both the neonatal rat and the CF–1 mouse overpredict the toxicity of the avermectin-type compounds to humans and to non-human primates.

3. *Conclusion.* There is a complete toxicity database for emamectin benzoate and exposure data is complete or is conservatively estimated based on data that reasonably accounts for potential exposures. Based on these risk assessments, Syngenta concludes that, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to emamectin benzoate residues.

F. International Tolerances

No codex maximum residue levels (MRLs) have been established for residues of emamectin benzoate.

[FR Doc. 05–16806 Filed 8–23–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7958–5]

Florida Petroleum Reprocessors Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Environmental Protection Agency has offered a de minimis settlement at the Florida Petroleum Reprocessors Superfund Site (Site) located in Davie, Florida. EPA will consider public comments until September 23, 2005. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicated the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887, E-mail: *Batchelor.Paula@EPA.gov*.

Written or e-mail comments may be submitted to Paula V. Batchelor at the above address within 30 days of the date of publication.

Dated: August 10, 2005.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 05–16812 Filed 8–23–05; 8:45 am]

BILLING CODE 6550–60–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved By Office of Management and Budget

August 9, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0806.

OMB Approval date: 11/12/2004.

Expiration Date: 11/30/2007.

Title: Universal Service—Schools and Libraries Universal Service Program.

Form No.: FCC 470. FCC 471.

Estimated Annual Burden: 60,000 responses; 480,000 total annual burden hours; approximately .166–4.5 hours average per respondent.

Needs and Uses: In 1997 the Commission adopted rules providing support for the Universal Service Schools and Libraries Support Mechanism (E-rate Program). FCC Forms 470 and 471 are required to determine eligibility by schools and libraries for discounts under the program, so that they can purchase telecommunications services, internet access, internal connections, and maintenance services. Pursuant to suggestions from the Department of Justice, the Commission is now implementing changes to its FCC Forms 470 and 471 in an effort to prevent waste, fraud and abuse in the program. The changes made to the FCC Forms 470 and 471 will make the E-Rate process more transparent, and will make transgressions of the law easier to detect and prosecute.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–16335 Filed 8–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 10, 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: Persons wishing to comment on this information collection should submit comments October 24, 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: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0532.

Title: Scanning Receiver Compliance Exhibit, Section 2.1033 (b)(10) and Section 15.121.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; Business or other for-profit; and State, Local or Tribal Government.

Number of Respondents: 40.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping, On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 40 hours.

Total Annual Cost: $2,000.

Privacy Impact Assessment: No Impact(s).

Needs and Uses: On March 31, 1999, the FCC released a *Report and Order,* Amendment of Parts 2 and 15 of the Commission Rules to Further Ensure That Scanning Receivers Do No Receive Cellular Radio Signals, ET Docket No. 980–76, FCC 99–58. The FCC rules under 47 CFR 2.1033(b)(10) require manufacturers of scanning receivers to design their equipment so that: It has 38 dB of image rejection for Cellular Service frequencies, tuning, control and filtering circuitry are inaccessible, and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission also requires manufacturers to submit information with any application for certification that describes: The testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following (47 CFR 15.121):

Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–16619 Filed 8–23–05; 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

August 10, 2005.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 23, 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: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to PRA@fcc.gov or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0674.

Title: Basic Tier Availability.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 8,250.

Estimated Time per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 18,563 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1618 states that a cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information: (a) That basic tier service is available; (b) the cost per month for basic tier service; and (c) a list of all services included in the basic service tier. These notification requirements are to ensure that subscribers are made aware of the availability of basic cable service at the time of installation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–16620 Filed 8–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 10, 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 No. 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: Persons wishing to comment on this information collection should

submit comments by October 24, 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: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0636.

Title: Equipment Authorization—Declaration of Compliance, Section 2.1075.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,000.

Estimated Time per Response: 19 hours (avg.).

Frequency of Response: Recordkeeping; One-time reporting requirement; Third party disclosure.

Total Annual Burden: 76,000 hours.

Total Annual Cost: $12,000,000.

Privacy Impact Assessment: No.

Needs and Uses: The equipment authorization procedure requires that equipment manufacturers or equipment suppliers test a product to ensure compliance with technical standards for limiting radio frequency emissions and include a declaration of compliance (DoC) with the standards in the literature furnished with the equipment. This statement of conformity and supporting technical data would be made available to the FCC by the responsible party, at the request of the FCC. Further, the FCC will permit personal computers to be authorized based on tests and approval of their individual components, without further testing of the completed assembly. Testing and documentation of compliance aids in controlling potential interference to radio communications. The data may be used for investigating complaints of harmful interference; to determine that the equipment marketed complies with the applicable FCC Rules; and to insure that the operation of the equipment is consistent with the initially documented test results.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–16621 Filed 8–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 93–193, 94–65; DA 05–2194]

Wireline Competition Bureau Approves Plan To Refund Interstate Access Customers of Ameritech, Nevada Bell, and Pacific Bell for 1993 and 1994 Tariff Periods

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides notice that the Wireline Competition Bureau has approved the plan to refund interstate access customers of the Ameritech Operating Companies (Ameritech), Nevada Bell Telephone Company (Nevada Bell), and Pacific Bell Telephone Company (Pacific Bell) for refunds associated with their 1993 and 1994 annual interstate access tariffs. It also provides information as to how refunds may be obtained by interstate access customers of Ameritech, Nevada Bell, and Pacific Bell that are either no longer readily identifiable or that are due refunds of less than $100.

DATES: Former interstate access customers may submit refund claims to SBC Communications, Inc. (SBC) through October 24, 2005.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for address postings.

FOR FURTHER INFORMATION CONTACT: Margaret Dailey, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520, *margaret.dailey@fcc.gov*.

SUPPLEMENTARY INFORMATION: On July 30, 2004, the Commission released the *Add-Back Tariff Investigation Order*, FCC 04–151, in CC Docket Nos. 93–193 and 94–65. In that Order, the Commission concluded its investigation of the 1993 and 1994 interstate access tariffs of price cap local exchange carriers (LECs) that implemented a sharing or lower formula adjustment. The Commission found unjust and unreasonable the 1993 annual access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1992 Price Cap Indexes (PCIs) and that failed to apply add-back in computing their 1992 earnings and rates of return and resulting 1993 PCIs. The Commission made the same findings for the 1994 interstate access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1993 PCIs. Finally, the Commission ordered affected price cap LECs to: (1) Recalculate their 1992 and 1993 earnings and rates of return, making an add-back adjustment; (2) determine the appropriate sharing or lower formula adjustment to their PCIs for the subsequent tariff year; (3) compute the amount of any resulting access rate decrease; and (4) submit a plan for refunding the amounts owed to customers plus interest as a result of any such rate decrease.

On August 30, 2004, SBC filed the refund plans required by the *Add-Back Tariff Investigation Order* and determined that refunds are due to interstate access customers of Pacific Bell for the 1994 tariff period and to interstate access customers of Ameritech and Nevada Bell for both the 1993 and 1994 tariff periods. In the *Add-Back Refund Order*, DA 05–719, released March 17, 2005, the Wireline Competition Bureau (Bureau) completed its review and approved SBC's refund plans as further detailed in that Order. The Bureau recognized that, due to factors such as bankruptcy, changes in ownership, or simple passage of time, some customers of Ameritech, Nevada Bell, and Pacific Bell may no longer be readily identifiable. Further, the Bureau did not require SBC to identify and notify customers that may be due refunds of less than $100. Customers that SBC cannot identify and customers due refunds of less than $100 may, however, obtain refunds through the following procedure, as specified in paragraph 22 of the *Add-Back Refund Order:* For at least 60 days after this notice is published in the **Federal Register**, SBC must post this notice on its company web sites that are most often consulted by its interstate access customers. SBC must also provide an address to which former access customers may submit refund claims by a specified date that is at least 60 days after the refund notice is first posted.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 05–16614 Filed 8–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 93–193, 94–65; DA 05–2195]

Wireline Competition Bureau Approves Plan To Refund Interstate Access Customers of Sprint/United LECs for 1993 and 1994 Tariff Periods

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides notice that the Wireline Competition Bureau has approved the plan to refund interstate access customers of certain Sprint/United incumbent Local Exchange Carriers (the Sprint/United LECs) for refunds associated with their 1993 and 1994 annual interstate access tariffs. It also provides information as to how refunds may be obtained by interstate access customers of the Sprint/United LECs that are either no longer readily identifiable or that are due refunds of less than $100.

DATES: Former interstate access customers may submit refund claims to the Sprint Incumbent Local Exchange Companies (Sprint) through October 24, 2005.

ADDRESSES: See Supplementary Information for address postings.

FOR FURTHER INFORMATION CONTACT: Margaret Dailey, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520, *margaret.dailey@fcc.gov*.

SUPPLEMENTARY INFORMATION: On July 30, 2004, the Commission released the *Add-Back Tariff Investigation Order*, FCC 04–151, in CC Docket Nos. 93–193 and 94–65. In that Order, the Commission concluded its investigation of the 1993 and 1994 interstate access tariffs of price cap local exchange carriers (LECs) that implemented a sharing or lower formula adjustment. The Commission found unjust and unreasonable the 1993 annual access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1992 Price Cap Indexes (PCIs) and that failed to apply add-back in computing their 1992 earnings and rates of return and resulting 1993 PCIs. The Commission made the same findings for the 1994 interstate access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1993 PCIs. Finally, the Commission ordered affected price cap LECs to: (1) Recalculate their 1992 and 1993 earnings and rates of return, making an add-back adjustment; (2) determine the appropriate sharing or lower formula adjustment to their PCIs for the subsequent tariff year; (3) compute the amount of any resulting access rate decrease; and (4) submit a plan for refunding the amounts owed to customers plus interest as a result of any such rate decrease.

On August 30, 2004, the Sprint Incumbent Local Exchange Companies filed the refund plans required by the *Add-Back Tariff Investigation Order* and determined that refunds are due to interstate access customers of the following Sprint/United incumbent LECs:

- United Telephone of Florida
- United Telephone Company of Ohio
- United Telephone Company of Indiana, Inc.
- United Telephone—Southeast, Inc.
- United Telephone—Midwest

—United Telephone Company of Kansas
—United Telephone Company of Eastern Kansas
—United Telephone Company of South Central Kansas
—United Telephone Company of Minnesota
—United Telephone Company of Missouri
—United Telephone Company of Texas
—United Telephone Company of the West

- Sprint/United Telephone—Northwest

(the Sprint/United LECs). In the *Add-Back Refund Order*, DA 05–719, released March 17, 2005, the Wireline Competition Bureau (Bureau) completed its review and approved Sprint's refund plans as further detailed in that Order. The Bureau recognized that, due to factors such as bankruptcy, changes in ownership, or simple passage of time, some customers of the Sprint/United LECs may no longer be readily identifiable. Further, the Bureau did not require Sprint to identify and notify customers that may be due refunds of less than $100. Customers that Sprint cannot identify and customers due refunds of less than $100 may, however, obtain refunds through the following procedure, as specified in paragraph 22 of the *Add-Back Refund Order:* For at least 60 days after this notice is published in the **Federal Register**, Sprint must post this notice on its company web sites that are most often consulted by its interstate access customers. Sprint must also provide an address to which former access customers may submit refund claims by a specified date that is at least 60 days after the refund notice is first posted.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 05–16615 Filed 8–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 93–193, 94–65; DA 05–2196]

Wireline Competition Bureau Approves Plan To Refund Interstate Access Customers of GTE LECs for 1993 and 1994 Tariff Periods

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides notice that the Wireline Competition Bureau has approved the plan to refund interstate access customers of certain GTE incumbent local exchange carriers (LECs) for refunds associated with their 1993 and 1994 annual interstate access tariffs. It also provides information as to how refunds may be obtained by interstate access customers of these GTE incumbent LECs that are either no longer readily identifiable or that are due refunds of less than $100.

DATES: Former interstate access customers may submit refund claims to Verizon Telephone Companies (Verizon) through October 24, 2005.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for address postings.

FOR FURTHER INFORMATION CONTACT: Margaret Dailey, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520, *margaret.dailey@fcc.gov*.

SUPPLEMENTARY INFORMATION: On July 30, 2004, the Commission released the *Add-Back Tariff Investigation Order*, FCC 04–151, in CC Docket Nos. 93–193 and 94–65. In that Order, the Commission concluded its investigation of the 1993 and 1994 interstate access tariffs of price cap LECs that implemented a sharing or lower formula adjustment. The Commission found unjust and unreasonable the 1993 annual access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1992 Price Cap Indexes (PCIs) and that failed to apply add-back in computing their 1992 earnings and rates of return and resulting 1993 PCIs. The Commission made the same findings for the 1994 interstate access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1993 PCIs. Finally, the Commission ordered affected price cap LECs to: (1)

Recalculate their 1992 and 1993 earnings and rates of return, making an add-back adjustment; (2) determine the appropriate sharing or lower formula adjustment to their PCIs for the subsequent tariff year; (3) compute the amount of any resulting access rate decrease; and (4) submit a plan for refunding the amounts owed to customers plus interest as a result of any such rate decrease.

In the *Add-Back Refund Order*, DA 05–719, released on March 17, 2005, the Wireline Competition Bureau (Bureau) disapproved the original refund plan filed by Verizon on behalf of certain Bell Atlantic and GTE incumbent LECs. Verizon filed a Modified Refund Plan on April 18, 2005 and determined that refunds are due to interstate access customers of the following GTE incumbent LECs for the tariff periods noted:

- Contel Pennsylvania (GTE North, Inc.) (1993, 1994)
- GTE Alaska, Inc. (1993, 1994)
- GTE Idaho (GTE Northwest, Inc.) (1994)
- GTE Indiana (GTE North, Inc.) (1993, 1994)
- GTE Michigan (GTE North, Inc.) (1993)
- GTE Missouri (GTE Midwest, Inc.) (1993)
- GTE Montana (GTE Northwest, Inc.) (1994)
- GTE Wisconsin (GTE North, Inc.) (1994)

(the GTE LECs). In the *Supplemental Add-Back Refund Order*, DA 05–2029, released July 15, 2005, the Bureau approved Verizon's Modified Refund Plan and directed Verizon to make refunds as further specified in that Order and in the *Add-Back Refund Order*. The Bureau recognized that, due to factors such as bankruptcy, changes in ownership, or simple passage of time, some customers of the GTE LECs may no longer be readily identifiable. Further, the Bureau did not require Verizon to identify and notify customers that may be due refunds of less than $100. Customers that Verizon cannot identify and customers due refunds of less than $100 may, however, obtain refunds through the following procedure, as specified in paragraph 22 of the *Add-Back Refund Order:* For at least 60 days after this notice is published in the **Federal Register**, Verizon must post this notice on its company web sites that are most often consulted by its interstate access customers. Verizon must also provide an address to which former access customers may submit refund claims by a specified date that is at least 60 days after the refund notice is first posted.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 05–16616 Filed 8–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 93–193, 94–65; DA 05–2197]

Wireline Competition Bureau Approves Plan To Refund Interstate Access Customers of BellSouth for 1993 and 1994 Tariff Periods

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides notice that the Wireline Competition Bureau has approved the plan to refund interstate access customers of BellSouth Telecommunications, Inc. (BellSouth) for refunds associated with its 1993 and 1994 annual interstate access tariffs. It also provides information as to how refunds may be obtained by BellSouth interstate access customers that are either no longer readily identifiable or that are due refunds of less than $100.

DATES: Former interstate access customers may submit refund claims to BellSouth through October 24, 2005.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for address postings.

FOR FURTHER INFORMATION CONTACT: Margaret Dailey, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520, *margaret.dailey@fcc.gov*.

SUPPLEMENTARY INFORMATION: On July 30, 2004, the Commission released the *Add-Back Tariff Investigation Order*, FCC 04–151, in CC Docket Nos. 93–193 and 94–65. In that Order, the Commission concluded its investigation of the 1993 and 1994 interstate access tariffs of price cap local exchange carriers (LECs) that implemented a sharing or lower formula adjustment. The Commission found unjust and unreasonable the 1993 annual access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1992 Price Cap Indexes (PCIs) and that failed to apply add-back in computing their 1992 earnings and rates of return and resulting 1993 PCIs. The Commission made the same findings for the 1994 interstate access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1993 PCIs. Finally, the Commission ordered affected price cap LECs to: (1) Recalculate their 1992 and 1993 earnings and rates of return, making an add-back adjustment; (2) determine the appropriate sharing or lower formula adjustment to their PCIs for the subsequent tariff year; (3) compute the amount of any resulting access rate decrease; and (4) submit a plan for refunding the amounts owed to customers plus interest as a result of any such rate decrease.

On August 30, 2004, BellSouth filed the refund plan required by the *Add-Back Tariff Investigation Order*. In the *Add-Back Refund Order*, DA 05–719, released on March 17, 2005, the Wireline Competition Bureau (Bureau) disapproved BellSouth's refund plan. BellSouth provided a further explanation of its refund plan calculations. Upon review of this explanation, the Bureau approved BellSouth's refund plan in the *Supplemental Add-Back Refund Order*, DA 05–2029, released July 15, 2005, and directed BellSouth to make refunds as further specified in that Order and in the *Add-Back Refund Order*. The Bureau recognized that, due to factors such as bankruptcy, changes in ownership, or simple passage of time, some BellSouth customers may no longer be readily identifiable. Further, the Bureau did not require BellSouth to identify and notify customers that may be due refunds of less than $100. Customers that BellSouth cannot identify and customers due refunds of less than $100 may, however, obtain refunds through the following procedure, as specified in paragraph 22 of the *Add-Back Refund Order:* For at least 60 days after this notice is published in the **Federal Register**, BellSouth must post this notice on its company web sites that are most often consulted by its interstate access customers. BellSouth must also provide an address to which former access customers may submit refund claims by a specified date that is at least 60 days after the refund notice is first posted.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 05–16617 Filed 8–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 93–193, 94–65; DA 05–2220]

Wireline Competition Bureau Approves Plan To Refund Interstate Access Customers of Bell Atlantic for 1994 Tariff Period

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides notice that the Wireline Competition Bureau has approved the plan to refund interstate access customers of the Bell Atlantic incumbent local exchange carriers (Bell Atlantic) for refunds associated with their 1994 annual interstate access tariff. It also provides information as to how refunds may be obtained by Bell Atlantic interstate access customers that are either no longer readily identifiable or that are due refunds of less than $100.

DATES: Former interstate access customers may submit refund claims to Verizon Telephone Companies (Verizon) through October 24, 2005.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for address postings.

FOR FURTHER INFORMATION CONTACT: Margaret Dailey, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520, *margaret.dailey@fcc.gov*.

SUPPLEMENTARY INFORMATION: On July 30, 2004, the Commission released the *Add-Back Tariff Investigation Order,* FCC 04–151, in CC Docket Nos. 93–193 and 94–65. In that Order, the Commission concluded its investigation of the 1993 and 1994 interstate access tariffs of price cap local exchange carriers (LECs) that implemented a sharing or lower formula adjustment. The Commission found unjust and unreasonable the 1993 annual access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1992 Price Cap Indexes (PCIs) and that failed to apply add-back in computing their 1992 earnings and rates of return and resulting 1993 PCIs. The Commission made the same findings for the 1994 interstate access tariffs of price cap LECs that implemented a sharing or lower formula adjustment in their 1993 PCIs. Finally, the Commission ordered affected price cap LECs to: (1) Recalculate their 1992 and 1993 earnings and rates of return, making an add-back adjustment; (2) determine the appropriate sharing or lower formula adjustment to their PCIs for the subsequent tariff year; (3) compute the amount of any resulting access rate decrease; and (4) submit a plan for refunding the amounts owed to customers plus interest as a result of any such rate decrease.

The Wireline Competition Bureau (Bureau) disapproved the original refund plan filed by Verizon on behalf of certain Bell Atlantic and GTE incumbent LECs. Verizon filed a Modified Refund Plan on April 18, 2005 and determined that refunds are due to Bell Atlantic interstate access customers for the 1994 tariff period. In 1994, the Bell Atlantic incumbent LECs consisted of Bell Atlantic—Delaware, Inc., Bell Atlantic—Maryland, Inc., Bell Atlantic—New Jersey, Inc., Bell Atlantic—Pennsylvania, Inc., Bell Atlantic—Virginia, Inc., Bell Atlantic—Washington, D.C., Inc., and Bell Atlantic—West Virginia, Inc. Bell Atlantic filed a single interstate access tariff for these LECs in 1994.

In the *Supplemental Add-Back Refund Order,* DA 05–2029, released July 15, 2005, the Bureau approved Verizon's Modified Refund Plan and directed Verizon to make refunds as further specified in that Order and in the *Add-Back Refund Order,* DA 05–719, which was released on March 17, 2005. The Bureau recognized that, due to factors such as bankruptcy, changes in ownership, or simple passage of time, some Bell Atlantic customers may no longer be readily identifiable. Further, the Bureau did not require Verizon to identify and notify customers that may be due refunds of less than $100. Customers that Verizon cannot identify and customers due refunds of less than $100 may, however, obtain refunds through the following procedure, as specified in paragraph 22 of the *Add-Back Refund Order:* For at least 60 days after this notice is published in the **Federal Register**, Verizon must post this notice on its company web sites that are most often consulted by its interstate access customers. Verizon must also provide an address to which former access customers may submit refund claims by a specified date that is at least 60 days after the refund notice is first posted.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 05–16618 Filed 8–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—07/11/2005			
20051164	eBay Inc.	Shopping.com Ltd	Shopping.com Ltd.
20051166	Tenaska Power Fund, L.P	Calpine Corporation	Caloube Construction Finance Company, Calpine Philadelphia, Inc.
20051197	Ultra Electronics Holdings, plc	Jonathan D. Adams	Audiopack Technologies, Inc.
20051200	James D. Dondero	Leap Wireless International, Inc	Leap Wireless International, Inc.
20051225	MidCountry Financial Corporation	Alfa Corporation	Alfa Financial Corporation.
20051228	Wind Hotels Holdings Inc	Wyndham International, Inc	Wyndham International, Inc.
20051229	Welsh, Carson, Anderson & Stowe IX, L.P.	Franck L. Gougeon	AGA Medical Corporation.
20051230	Triton Acquisition Holding Co.	Maytag Corporation	Maytag Corporation.

Trans #	Acquiring	Acquired	Entities
20051233	Network Appliance, Inc	Decru, Inc	Decru, Inc.
20051236	Ford Motor Company	Visteon Corporation	Newco.
20051237	Copano Energy, L.L.C	Precourt Interests, Ltd	ScissorTail Energy, LLC.
20051242	Mitsubishi Corporation	Calpine Corporation	Calpine Morris, LLC.
20051246	Parametric Technology Corporation	Arbortext, Inc	Arbortext, Inc.
20051247	MCNA Cable Holdings LLC	ML Media Companies, Inc	Century-ML Cable Venture, a debtor-in-possession.
20051249	MCNA Cable Holdings LLC	Adelphia Communications Corporation, a debtor-in-possession.	Century-ML Cable Venture, a debtor-in-possession.
Transactions Granted Early Termination—07/12/2005			
20051252	New Century Financial Corporation	Royal Bank of Canada	RBC Mortgage Company.
Transactions Granted Early Termination—07/13/2005			
20051203	Danaher Corporation	John W. Spencer and Janelle Spencer.	Dental Equipment, LLC.
20051209	Computer Associates International, Inc.	Niku Corporation	Niku Corporation.
20051235	Mega Bloks Inc	Rose Art Industries, Inc.	Rose Art Industries, Inc.
20051251	Jupitermedia Corporation	Jeffrey Burke and Lorraine Triolo	PictureArts Corporation.
20051256	Shepherd Investments International, Ltd.	IEG Virtual Studios LLC	IEG Virtual Studios LLC.
20051285	Rudolph Technologies, Inc	August Technology Corporation	August Technology Corporation.
Transactions Granted Early Termination—07/14/2005			
20051224	Aetna Inc	KRG Capital Fund II, L.P	HMS Healthcare, Inc.
20051244	Bushnell Performance Optics	Wells Fargo & Company	Mike's Holding Company.
Transactions Granted Early Termination—07/15/2005			
20051248	V&S Vin Sprit AB	CL Financial, Ltd	Cruzan International, Inc.
20051265	KRG Capital Fund II, L.P	P. Scott Lowery	Collect America, Ltd.
20051273	Leucadia National Corporation	VarTec Telecom, Inc. (Debtor-in-Possession).	Excelcom, Inc., Excel Communications Marketing, Inc., Excel Management Service, Inc., Excel Products, Inc., Excel Telecommunications, Inc., Excel Telecommunications of Virginia, Inc., Excel Teleservices, Inc., Telco Communications Group, Inc., Telco Nework Services, Inc., VarTec Business Trust, VarTec Properties, Inc., VarTec Resource Services, Inc., VarTec Solutions, Inc., VarTec Telecom Holding Company, VarTec Telecom International Holding Company, VarTec Telecom of Virginia, Inc.
20051276	GUS plc	Robert L. Brackett	Credit Data Services.
20051277	GUS plc	Robert B. Chaffiot	Credit Data Services.
Transactions Granted Early Termination—07/19/2005			
20050702	Novartis AG	Santo Holding AG	Eon Labs, Inc.
20051068	Pearson plc	Ripplewood Partners, L.P	American Guidance Service Inc.

Trans #	Acquiring	Acquired	Entities
20051205	Weatherford International Ltd	Precision Drilling Corporation	Daquing Computalog Rainbow Geotechnical Development Corp., Global Employment Corporation, Global SanteFe Asset Holding, Inc., Global SanteFe Desert Rig Holdings Inc., PD Global Employment Corporation, PD International Services Inc., Precision Drilling Service (Netherlands) B.V., Precision Drilling Services (Oman) & Co. LLC, Precision Drilling Services (Singapore) Pte. Ltd., Precision Drilling Services (Thailand) Ltd., Precision Drilling Services (UK) Ltd., Precision Energy Services Colombia Ltd., Precision Energy Services Inc. (BVI) Ltd., Richdear Holdings Limited.
20051208	Precision Drilling Corporation	Weatherford International Ltd	Weatherford International Ltd.
20051259	Rufino Vigil Gonzalez	PAV Republic, Inc	PAV Republic, Inc.
20051272	Carl C. Icahn	WestPoint Stevens Inc. (Debtor-in-Possession).	J.P. Stevens Enterprises, Inc., WestPoint Stevens Stores Inc.
20051274	GUS plc	Luciano Rammairone	ClassesUSA.com.
20051275	Legg Mason, Inc	Giovanni Agnelli e C.S.a.p.as	Permal Group Ltd.
Transactions Granted Early Termination—07/21/2005			
20051239	International Business Machines Corporation.	Robert Barritz	Isogon Corporation.
20051264	Quadrant AG	Menasha Corporation	Poly Hi Solidur.
Transactions Granted Early Termination—07/22/2005			
20051271	ABN AMRO Holding N.V	UMP–Kymmene Corporation	Loparex B.V., Loparex Inc., Loparex Ltd., Loparex Oy.
20051288	Schneider Electric SA	Fremont Partners, L.P.,	Juno Lighting, Inc.
20051294	McKesson Corporation	D&K Healthcare Resources, Inc	D&K Healthcare Resources, Inc.
20051298	AMIS Holdings, Inc	Flextronics International Ltd	Flextronics Semiconductor, Inc.
20051302	NextMedia Investors LLC	Sumner M. Redstone	Infinity Radio Inc.
Transactions Granted Early Termination—07/25/2005			
20051260	Rosen's Diversified, Inc	American Foods Group, LLC	American Foods Group, LLC
20051296	H.J. Heinz Company	KRSM Management, LLC	Nancy's Specialty Foods, Inc.
20051297	Pfleiderer AG	Kunz Holding GmbH & Co. KG	BHT Bau Holztechnik Thurigen GmbH saalburgEbersdorf, Kunz Faserplattenwerk Baruth GmbH, Kunz Gmbh & Co. KG, Gschwend, Kunz Infomatik GmbH, Unterensingen, Unikunz Canada Inc., UTB Unitherm Baruth GmbH Baruth.
20051306	The British United Provident Association Limited.	Michael A. Carricarte	Amedex Insurance Company, Amedex Investment Corporation, Inc., Amedex Worldwide Corporation, Americas International Network Corp., Onup Group Corp., U.S.A. Medical Services Corp., Colgate-Palmolive Company.
Transactions Granted Early Termination—07/26/2005			
20050658	United Technologies Corporation	The Boeing Company	Boeing Management Company.
Transactions Granted Early Termination—07/27/2005			
20051261	Navistar International Corporation	Carlyle Partners III, L.P	Grand Vehicle Works Holdings Corporation.
20051286	Dover Corporation	Michael D. Lyon	Colder Products Company.
20051289	Nightwatch Holdings S.A	E.ON AG	Ruhrgas Industries Gmbh.
20051295	Friedman Fleischer & Lowe Capital Partners II, L.P.	Home Health Holdings, Inc	Home Health Holdings, Inc.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—07/28/2005			
20051181	Broadcom Corporation	Siliquent Technologies, Inc	Siliquent Technologies, Inc.
20051280	Fisher Scientific International, Inc	Marathon Fund Limited Partnership IV.	Lancaster Laboratories, Inc.
20051283	Danaher Corporation	LM Investments S.a.r.l	Leica Microsystems AG.
20051307	Salix Pharmaceuticals, Ltd	InKine Pharmaceutical Company, Inc	InKine Pharmaceutical Company, Inc.
20051314	Plantronics, Inc	Altec Lansing Technologies, Inc	Altec Lansing Technologies, Inc.
Transactions Granted Early Termination—07/29/2005			
20051254	Schneider National, Inc. Voting Trust	American Port Services, Inc	American Port Services, Inc.
Transactions Granted Early Termination—08/01/2005			
20051270	HSBC Bank plc	Pactiv Corporation	Wellenfoam N.V.
20051293	General Electric Company	Welch Allyn Holdings, Inc	Everest VIT, Inc.
20051313	General Electric Company	AIG Highstar Capital, L.P	Southern Star Central Corp.
20051319	Berkshire Hathaway Inc	Fleetwood Enterprises, Inc	Expression Homes Corporation, Fleetwood Home Centers of Nevada, Inc., Fleetwood Home Centers of Texas, Inc., Fleetwood Retail Corp., Fleetwood Retail Corp. of Alabama, Fleetwood Retail Corp. of Arizona, Fleetwood Retail Corp. of Arkansas, Fleetwood Retail Corp. of California, Fleetwood Retail Corp. of Colorado, Fleetwood Retail Corp. of Florida, Fleetwood Retail Corp. of Georgia, Fleetwood Retail Corp. of Idaho, Fleetwood Retail Corp. of Illinois, Fleetwood Retail Corp. of Kansas, Fleetwood Retail Corp. of Kentucky, Fleetwood Retail Corp. of Louisiana, Fleetwood Retail Corp. of Michigan, Fleetwood Retail Corp. of Mississippi, Fleetwood Retail Corp. of New Mexico, Fleetwood Retail Corp. of North Carolina, Fleetwood Retail Corp. of Ohio, Fleetwood Retail Corp. of Oklahoma, Fleetwood Retail Corp. of Oregon, Fleetwood Retail Corp. of South Carolina, Fleetwood Retail Corp. of Tennessee, Fleetwood Retail Corp. of Virginia, Fleetwood Retail Corp. of Washington, Fleetwood Retail Corp. of West Virginia, Fleetwood Retail Corporation of Missouri.
20051320	Sprint Corporation	US Unwired Inc	US Unwired Inc.
20051321	The Public Warehousing Company—K.S.C.	Questor Partners Fund II, L.P	GeoLogistics Corporation.
20051323	Flextronics International Ltd	Nortel Networks Limited	Nortel Networks Limited, Nortel Networks S.A., Nortel Networks UK Limited.
20051325	Inergy, L.P	AIG Highstar Capital, L.P	Central New York Oil And Gas Company, eCORP Marketing, LLC.
20051326	Zhone Technologies, Inc	Paradyne Networks, Inc	Paradyne Networks, Inc.
20051335	Investment Technology Group, Inc	The MacGregor Group, Inc	The MacGregor Group, Inc.
20051342	NCO Group, Inc	GTCR Fund V, L.P	Risk Management Alternatives, Inc.
Transactions Granted Early Termination—08/02/2005			
20051310	Ossur HF	Cortec Group Fund III, L.P	Royce Medical Holdings, Inc.
20051315	Koninklijke Philips Electronics N.V	Stentor, Inc	Stentor, Inc.
20051322	The Home Depot, Inc	National Waterworks Holdings, Inc/	National Waterworks Holdings, Inc.
20051338	Carlyle Partners IV, L.P	Golder, Thoma, Cressey, Rauner Fund V, L.P.	LifeCare Holdings, Inc.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—08/03/2005			
20051341	Department 56, Inc	Brown-Forman Corporation	Lenox, Incorporated.
Transactions Granted Early Termination—08/04/2005			
20051253	Integrated Device Technology, Inc	Integrated Circuit Systems, Inc	Integrated Circuit Systems, Inc.
20051268	Entergy Corporation	Attala 2004 Trust	Central Mississippi Generating Company, LLC
20051303	Omnicare, Inc	excelleRx, Inc	excelleRx, Inc.
20051316	New Refco Group Ltd., LLC	Cargill Incorporated	Cargill Investor Services, Inc., Cargill Investor Services Limited, Cargill Investor Services (Singapore) Pte. Ltd., CIS Cash Management, Inc., CIS Financial Services, Inc., CIS Investments, Inc., CIS Securities, Inc.
Transactions Granted Early Termination—08/05/2005			
20051308	Greene Group, Inc	Cemex S.A. de C.V.	RMC Mid-Atlantic, LLC.
20051329	Polaris Industries Inc	Stefan Pierer	KTM Power Sports AG
20051330	Polaris Industries Inc	Rudolf Knunz	KTM Power Sports AG.
20051336	Welsch, Carson, Anderson & Stowe X, L.P.	Pharma Services Holding, Inc	Early Development and Packaging Services, USA, L.L.C.
20051337	WMB Holdings Inc	CityBank	Diligenz, Inc.
20051344	Perot Systems Corporation	Ronald J. Lockard	Technical Management, Inc.
20051346	Sagicor Financial Corporation	Vesta Insurance Group, Inc	American Founders Financial Corporation, Laurel Life Insurance Company.
20051349	Cisco Systems, Inc	Sheer Networks Inc	Sheer Networks Inc.
20051353	BNP Paribas S.A	FundQuest Incorporated	FundQuest Incorporated.
20051358	Fiserv, Inc	Great Hill Equity Partners II Limited Partnership.	BillMatrix Corporation.
20051364	Business Objects S.A	Trevor Lloyd	SRC Software, Inc.
20051368	Barry Diller	Barry Diller	Expedia, Inc.

For Further Information Contact: Sandra M. Peay, Contact Representative or Renee Hallman, Case Management Assistant. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–16778 Filed 8–23–05; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of the Nomination of Candidates To Serve as Members of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: The National Vaccine Program Office (NVPO), a program office within the Office of Public Health and Science, DHHS, is soliciting nominations of qualified candidates to be considered for appointment as members and representatives to the National Vaccine Advisory Committee (NVAC). The activities of this Committee are governed by the Federal Advisory Committee Act (FACA).

Consistent with the National Vaccine Plan, the Committee advises and makes recommendations to the Assistant Secretary for Health in his/her capacity as the Director of the National Vaccine Program, on matters related to the Program's responsibilities. Specifically, the Committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; recommends research priorities and other measures to enhance the safety and efficacy of vaccines. The Committee also advises the Assistant Secretary for Health in the implementation of Sections 2102 and 2103 of the PHS Act; and identifies annually the most important areas of government and non-government cooperation that should be considered in implementing Sections 2102 and 2103 of the PHS Act.

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EST on October 3, 2005, at the address below.

ADDRESSES: All nominations should be mailed or delivered to Bruce G. Gellin, M.D., M.P.H., Executive Secretary, National Vaccine Advisory Committee, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Hubert H. Humphrey Building; Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Emma English, Program Analyst, National Vaccine Program Office, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443–H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5566; *nvac@osophs.dhhs.gov*.

A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. English or by accessing the NVAC Web site at: *http://www.hhs.gov/nvpo/nvac*.

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 300aa–5, Section 2105 of the Public Health Service (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Committee Function: Qualifications and Information Required: As part of an ongoing effort to enhance deliberations and discussions with the public on vaccine and immunization policy, nominations are being sought for interested individuals to serve on the Committee. Individuals selected for appointment to the Committee will serve as voting members or representatives. Voting members shall be selected from individuals who are engaged in vaccine research or the manufacture of vaccines, or who are physicians, members of parent organizations concerned with immunizations, representatives of State or local health agencies or public health organizations. Voting representatives are official representatives of the vaccine manufacturing industry who are engaged in vaccine research or the manufacture of vaccines. Individuals selected for appointment to the Committee can be invited to serve terms with periods of up to four years.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Applications cannot be submitted by facsimile. The names of Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made that a broad representation of geographic areas, gender, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Dated: August 18, 2005.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. 05–16762 Filed 8–23–05; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging Policy Committee

AGENCY: Administration on Aging, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the seventh Policy Committee meeting concerning planning for the 2005 White House Conference on Aging. 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 inform the contact person listed below in advance of the meeting.

DATES: The meeting will be held Tuesday, September 20, 2005, from 10 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in the Atrium Ballroom at The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001–1527.

FOR FURTHER INFORMATION CONTACT: Kim Butcher at (301) 443–2887, or e-mail at *Kim.Butcher@whcoa.gov*. Registration is not required. Seating is on a first come, first-served basis.

SUPPLEMENTARY INFORMATION: Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000), the Policy Committee will meet to continue discussions and planning for the 2005 WHCoA that will be held from December 11 through 14, 2005. In addition, there will be presentations by Brent Green, President of Brent Green & Associates, Inc., a marketing consulting firm, and author of *Marketing to Leading Edge Baby Boomers* and David G. Walker, Comptroller General, U.S. Government Accountability Office.

Dated: August 19, 2005.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. 05–16829 Filed 8–23–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0106]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Preventive Health and Health Services Block Grant, Annual Application and Reports, OMB No. 0920–0106—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1994, OMB approved the collection of information provided in the grant applications and annual reports for the Preventive Health and Health Services (PHHS) Block Grant (OMB No. 0920–0106). CDC is requesting OMB clearance for this legislatively mandated information collection. The request is to approve the development and adherence to *Healthy People 2010* (the Nation's Health Objectives) which was released in the Spring of 2000. The PHHS block grant is mandated according to section 1904 to adhere to the Healthy People framework.

This information, which is collected through the application forms from the official State health agencies, is required from section 1905 of the Public Health Service Act. There is a slight change in the proposed information collection from previous years. The changes include more program specific information and the relationship of block funded activities to program strategy. The information collected from the annual report forms is required by section 1906. The development of a PHHS block grant Web page, with data Web links from existing federal databases, will be used to coincide with the collection of uniform data for the

annual report. The ability to collect data through Internet accessibility will allow for a more streamlined and efficient use of data processing by the states and reduce the states' burden of duplicate reporting on outcome and risk factor data. There is no cost to respondents except their time to complete the application/report. The total estimated annualized burden hours are 4270.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	No. of respondents	No. of responses/respondent	Average burden per response (hours)
Annual Applications	*61	1	30
Annual Reports	61	1	40

*There are 61 respondents (Official State Health Agencies from the 50 States, the District of Columbia, 8 U.S. Territories, and two American Indian Tribes (Santee Sioux and Kickapoo of Kansas). The response burden consists of an annual application and an annual report (with selected summary data items).

Dated: August 11, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–16366 Filed 8–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–03AA]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Potential Reproductive and Neurological Effects of Exposure to Acrylamide—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Consistent with this mission, NIOSH is undertaking a study of the reproductive and neurobehavioral effects of occupational exposure to acrylamide. Male acrylamide workers and control workers (N = 100 per group) will be recruited from manufacturing, end-user, and non-exposed settings. Exposure will be characterized by acrylamide hemoglobin, adduct and urinary metabolite levels, ambient area, personal air, and dermal sampling. Reproductive effects will be evaluated by examining semen quality, sperm DNA integrity, reproductive hormone levels, and prostate specific antigen (PSA) levels.

Neurobehavioral effects will be assessed using sensation-tactile, postural stability, grooved pegboard, and simple reaction time tests. Two questionnaires will be administered on one occasion. Questionnaire information will be collected concurrently to augment test interpretation, adjust for potential confounders and covariates during regression analysis, correlate specific jobs and job activities with exposure measurements, and for validation purposes. Findings from this study will clarify if the adverse reproductive effects observed in animal studies are also present in acrylamide-exposed male workers, and if preclinical neurobehavioral deficits are present at acrylamide doses currently considered to be within safe limits. This study is scheduled for implementation between 2005 and 2007. There is no cost to the respondent other than their time for participating. The annualized estimated burden for this data collection is 54 hours.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Survey questionnaires	Number of respondents	Number of responses/respondent	Average burden/response (hours)
Medical & Reproductive History Questionnaire	67	1	13/60
Occupational History Questionnaire	67	1	34/60
Non-participant Questionnaire	17	1	2/60

Dated: August 11, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–16367 Filed 8–23–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cooperative Agreement To Build Local Capacity To Respond to the HIV/AIDS Epidemic in the Caribbean, as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA157.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 19, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301 and 307 of the Public Health Service Act [42 U.S.C. 24l and 2421, as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm*.

With an average adult HIV prevalence of 2.3 percent, the Caribbean is the second-most affected region in the world, according to the 2004 Annual Report from the Joint United Nations Programme on HIV and AIDS (UNAIDS). Overall, the highest HIV-infection levels among women in the Americas are in Caribbean countries, and AIDS has become the leading cause of death in the Caribbean among adults aged 15–44 years (Caribbean Epidemiology Centre, Pan-American Health Organization (PAHO), World Health Organization (WHO), 2004). A regional response to HIV/AIDS is necessary in the Caribbean because of population mobility, the limited response capacity of individual countries, and the need for a multisectoral, collaborative strategy (A Study of the Pan Caribbean Partnership Against HIV/AIDS 2004).

Purpose: The purpose of this funding announcement is to build progressively an indigenous, sustainable response to regional HIV epidemic in the Caribbean through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions, and improved linkages to confidential HIV counseling and testing and HIV treatment services by targeting rural and other underserved populations in the West Indies.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and one (or more) of the performance goal(s) for the HHS/CDC National Center for HIV, Sexually Transmitted Disease and Tuberculosis Prevention (NCHSTP) within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services; strengthen the capacity nationwide to monitor the epidemic; develop and implement effective HIV prevention interventions; and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS, including CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of ''research'', please see the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in the Caribbean. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in the Caribbean will review. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined above. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches.

Capacity-building technical assistance activities covered under this cooperative agreement are limited to the following:

1. Strengthen organizational infrastructure of HIV prevention, care and treatment programs located within the Caribbean Region.

a. Provide technical assistance in the management of HIV prevention, care and treatment programs. Examples include, but are not limited to the following: (1) Organizational assessments to determine the needs, resources, readiness and gaps of organizational infrastructure systems (*e.g.*, governance, management, administration, personnel, and fiscal); (2) proposal development and grant writing; (3) resource development, including development of reimbursement mechanisms, identification of other funding sources and development of public/private partnership strategies; (4) management information systems (data management); (5) strategic planning; (6) leadership development; (7) team building; (8) human resources management, including staff and volunteer recruitment, management, retention and training; (9) organizational quality-assurance and monitoring; (10) program marketing and public relations; and (11) cross-cultural communications.

b. Plan and conduct site visits, study tours, conferences and/or meetings for member country health officials.

c. Provide technical assistance and training in strategic planning, training of trainers, and manual development and dissemination.

d. Provide organizational development of Secretariat Staff and Executive Board to respond to the needs of the organization. Examples include, but are not limited to: (1) Training; (2) skill building in management; (3) increasing human capacity and infrastructure; (4) expanding sources of funding, and securing multi-year funding; and (5) development of overall governance documents, including defining roles and responsibilities of members, Secretariat Staff, and Executive Board.

2. Strengthen HIV prevention, care and treatment programs located within the Caribbean Region.

a. Provide technical assistance in the design, implementation, and management of prevention, care and treatment programs.

b. Develop and disseminate resource toolkits for National AIDS Programs in the Caribbean Region that programs can use to assist in planning, implementation and evaluation of programs.

c. Translate existing resource materials for use in HHS/CDC GAP Caribbean Regional countries and territories.

d. Establish peer-to-peer technical assistance networks from AIDS programs to AIDS programs (by optimizing cultural similarities and common language), including the continuation of technical exchange in the Caribbean Regional countries and territories; development of a mentoring program; and twinning relationships with the United States (especially in communities of the Caribbean diaspora) and other international AIDS programs.

e. Identify and share technical best practices (U.S. and international), new research and HIV treatment regimens.

f. Increase communication via phone, the web and regular mail, including translation and interpretation into the four working languages of the countries and territories located within the Caribbean Region.

g. Facilitate program management workshops to include, but not limited to, general program management, resource mobilization, monitoring and evaluation, migration and mobility, and policy development.

3. Strengthen policy development for HIV prevention, care and treatment programs located within the Caribbean Region.

a. Develop issue briefs and organizational policy papers, including but not limited to: Stigma and discrimination; technical assistance; and migration and mobility, translated into the four working languages of the Caribbean Region.

b. Complete regional reviews of the status and trends regarding HIV-related stigma and discrimination; develop a matrix of all regional programs and policies for combating stigma and discrimination; and increase member's abilities to serve as local resources for the mitigation of stigma and discrimination in their respective countries or territories.

c. Increase the knowledge base for existing HIV-related policies through the completion of databases on existing regional HIV/AIDS policies and programs, and skill building of public health officials to participate in the development of country-relevant policies.

Administration: The winning applicant must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS/CDC activities for this program are as follows:

1. Provide policy and program information for rapid dissemination and implementation.

2. Provide technical advice in the development of systems to implement HHS/CDC policies and programs.

3. Provide consultation and scientific and technical assistance in planning, operating, analyzing and evaluating HIV prevention, care and treatment programs and program-evaluation activities.

4. Disseminate current information, including best practices, in all areas of HIV prevention, care and treatment.

5. Monitor progress in achieving the purpose of this program, as well as project objectives.

6. Assist in assessing internal program operations, and in evaluating overall effectiveness of programs.

7. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

8. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement.

9. Review and approve grantee's annual work plan and detailed budget.

10. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

11. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

12. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

13. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year.

14. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

15. Provide in-country administrative support to help grantee meet U.S.

Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement. (HHS involvement in this program is listed in the Activities Section above.)

Fiscal Year Funds: 2005.

Approximate Total Funding: $150,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $150,000. (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: $100,000.

Ceiling of Award Range: $150,000. (This amount is for the first 12-month budget period.)

Anticipated Award Date: September 23, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- For profit organizations
- Small, minority, women-owned businesses
- Community-based organizations
- Research institutions
- Hospitals
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianas Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

Additionally, applicants must meet the criteria listed below:

- Have at least three years of documented HIV/AIDS related program implementation experience in the Caribbean Region.
- Have, in one organization, ability and experience in convening and working in an on-going manner with senior public sector HIV/AIDS program officers/coordinators from at least 15 Caribbean nations on technical areas of treatment, care and prevention.
- Have experience in partnership and collaboration with other regional HIV/AIDS organizations.
- Be a member of the Pan Caribbean AIDS Partnership (PANCAP).

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United Sates Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov*.

Application forms and instructions are available on the HHS/CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: Thirty-five (35). If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Double-spaced
- Numbered pages
- Held together only by rubber bands or metal clips; not bound in any other way.
- Application must be submitted in English

Your narrative should address activities to be conducted over the entire project period, and must thoroughly develop the program plan. The program plan will include a description of your program and strategy, objectives, activities, timelines, program experience, management plan and organization structure, and measures of effectiveness as follows:

- Program and Strategy

Provide a description of your proposed program and the strategy for implementation. Include a description of the administrative, financial, accounting and human resource models used to build the organizational infrastructure capacity *e.g.*, grant writing, fiscal management, board and staff development). Also, include a description of the plan to support capacity building and technical assistance needs of the National AIDS Programs located within the Caribbean Region.

- Objectives

What are your objectives for addressing the general and focus area-specific activities?

- Activities

What are your proposed activities? These activities must relate to each of the objectives listed above.

• Timeline (*e.g.*, GANNT Chart)

Provide a timeline and list staff responsible for implementing activities in the first year.

• Program Experience

Describe your organization's program experience as it relates to the proposed activities in this program announcement. Address the methods that you have used to provide similar services in the past. Also, include an explanation of how funds used in this cooperative agreement will be used differently, or in ways that will expand upon programs that are supported with existing or future funds. Address your organization's experience and capacity to provide technical assistance that responds effectively to the cultural and linguistic characteristics of your recipients. In answering this question, describe the types of services provided and list any culturally and linguistically appropriate curricula and materials that your organization has adapted or developed.

• Management Plan and Organizational Structure

Describe your management and staffing plan to conduct or support the essential components of this cooperative agreement, including a description of the roles, responsibilities and relationships of all staff supported through this cooperative agreement. (Organizational charts and resumes of all key staff to demonstrate their qualifications may be included in the appendices).

• Measures of Effectiveness

These must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome of this cooperative agreement.

• Budget and Budget Justification (Not included in page limit. Reviewed but not scored.) Include a detailed and justified budget required to accomplish the objectives for the first year of the project. Justify all operating expenses in relation to the planned activities and stated objectives. HHS/CDC may not fund or approve all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate. Is the itemized budget for conducting the project, along with justification, reasonable, and consistent with stated objectives and planned program activities?

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

• Curriculum Vitas/Resumes of current staff who will work on the activity

• Organizational Charts

• A list of culturally and linguistically appropriate materials that are available, and are currently being delivered.

• A description of funding from other sources (international, regional, local, private, etc.) to conduct similar activities. This should include a summary of current funds received with the name of the sponsoring organization/source of income, level of funding, description of how funds have been used and budget period. Identify proposed personnel who will conduct and oversee the activities of this project, and all funding sources supporting these individuals (include their roles and responsibilities).

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.pdf*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 19, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov*. We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

• Funds may not be used for research.

• Reimbursement of pre-award costs is not allowed.

• Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.

• All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

• The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

• The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

• All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

• You must obtain annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.

• A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in Prevention of Mother-to-Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

• Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities: The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all sub-agreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, ''Prostitution and Related Activities.''') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit applications electronically at *www.grants.gov*. You will be able to download the application package from *www.grants.gov*, complete it off-line, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support

Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of the application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that you submit the grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF. You may find directions for creating PDF files on the Grants.gov web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—AA157, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Program Plan (40 Points)

a. Is the program and strategy based on sound reasoning or evidence? Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in the Caribbean to achieving the goals of the Emergency Plan?

b. Are the proposed program objectives specific, measurable, achievable and time-phased?

c. What is the likelihood that the proposed program activities will accomplish the proposed program objectives and contribute to the numerical goals of the President's Emergency Plan for AIDS Relief in Haiti and Guyana?

d. Is the proposed timeline feasible?

2. Program Experience (20 Points)

Is the applicant's program experience relevant to the provision of the services they intend to provide? Does the staff involved have appropriate fluency and skill in local languages?

3. Organizational Capacity (20 Points)

Does the applicant demonstrate current organizational capacity to provide the interventions that they intend to provide?

4. Evaluation Monitoring Plan (20 Points)

Does the applicant propose a system for reviewing and adjusting program activities based on monitoring information? Does the applicant include indicators for each program milestone and incorporated into the financial and programmatic reports? Are all indicators drawn from the Emergency Plan Indicator Guide? Can the system generate financial and program reports to show disbursement of funds, and progress towards achieving the objectives of the Emergency Plan in Haiti and Guyana?

5. Budget and Budget Justification (Reviewed, but not scored)

Is the itemized budget for conducting the project, along with justification, reasonable, and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in the Caribbean?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 23, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–6 Patient Care
- AR–10 Smoke-Free Workplace Requirements
- AR–12 Lobbying Restrictions

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

You need to include an additional Certifications form from the PHS5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf*. Once you

have filled out the form, please attach it to your *Grants.gov* submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities and Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activities and Objectives.

d. Budget and budget narrative with justification.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for the Caribbean.

f. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period. The financial report must show obligations, disbursements and funds remaining by program activity. Indicators must be developed for each program milestone and incorporated into the periodic financial and programmatic reports. All indicators need to be drawn from The Emergency Plan Indicator Guide.

3. Annual Reports are due within no later than 90 days of the end of the budget period. The report should detail progress toward achieving program milestones and projected next year activities. Indicators must be developed for each program milestone and incorporated into the annual financial and programmatic reports. All indicators need to be drawn from the Emergency Plan. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for the Caribbean.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Ken Hunt, Project Officer, HHS Global AIDS Program, Caribbean Regional Office, U.S. Embassy, 15 Queens Park West, Port of Spain, Trinidad, WI, Telephone: 868–628–7325, E-mail: *khunt@cdc.gov*.

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *VWalker@cdc.gov*.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 17, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16816 Filed 8–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthening HIV/AIDS, TB and STI Prevention, Control and Treatment in the Oromia Area of the Southwest Region of the Federal Democratic Republic of Ethiopia

Announcement Type: New .

Funding Opportunity Number: AA136.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application deadline: September 19, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 2421], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm*.

The Emergency Plan goals specific to Ethiopia are to treat at least 210,000 HIV-infected individuals and care for 1,050,000 HIV-affected individuals, including orphans.

Purpose: The U.S. Department of Health and Human Services (HHS) announces the availability of Fiscal Year (FY) 2005 funds for a cooperative agreement for strengthening the activities on the prevention, control, and treatment of Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome, other Sexually Transmitted Infections and Tuberculosis (HIV/AIDS/STI/TB) among students and faculty of higher education institutions in the Oromia area of Southwest Ethiopia.

This project particularly aims to: (1) Improve HIV/AIDS/STI/TB prevention following the Abstinence, Be Faithful, and, for populations engaged in high-risk behaviors,[1] Correct and Consistent Condom Use (ABC) strategies, control, and treatment programs; (2) strengthen training in HIV/AIDS/STI/TB care and treatment, (3) implement HIV/AIDS/STI/TB related targeted monitoring and evaluations and development plans; (4) establish a technical support and training unit to support the Oromia Regional Health Bureau and assist HIV/AIDS/STI/TB program implementation in the Oromia region of Southwest Ethiopia; (5) conduct prevention, care and treatment of HIV/AIDS/STIs programs among students and faculty at institutions of higher education in the region and (6) develop the health system and infrastructure important for the

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

delivery of HIV/AIDS/STI/TB services in the Oromia region Southwest Ethiopia.

This project addresses the Healthy People 2010 focus area of HIV.

The U.S. Government (USG) has taken major steps to reduce the global impact of HIV/AIDS. Through various agencies, including the Department of Health and Human Services, the U.S. Government is working with specific countries in sub-Saharan Africa, Asia, and the Americas. The President's Emergency Plan for AIDS Relief aims at strengthening national capacities for: (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) health systems and infrastructure development. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active.

As one of the key agencies to implement the Emergency Plan, HHS is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in target countries, including Ethiopia. In particular, HHS's mission in Ethiopia is to work with Ethiopian and international partners to develop and apply effective interventions to prevent and treat HIV infection and associated illness and deaths from AIDS.

Ethiopia is among the world's countries most adversely affected by the HIV/AIDS epidemic and TB. STIs are highly prevalent, and contribute to morbidity and mortality from HIV/AIDS. With an estimated 1.5 million adults infected with HIV by the end of 2003, Ethiopia had one of the largest populations of HIV-infected persons in the world. The estimated percent of persons age 15 to 49 infected with HIV is 4.4 percent. There have been about a million cumulative deaths due to AIDS. Estimates posit that 200,000 children are currently living with HIV in Ethiopia and that AIDS has orphaned over 500,000 children.

Given the complex nature of the causes and the serious impact of the HIV/AIDS epidemic in Ethiopia, forging a strong multi-sectoral and multi-level partnership and broad stakeholder involvement is imperative. The Government of Ethiopia has therefore adopted an HIV/AIDS/STI/TB program that responds to these needs, and implementation mechanisms are in place. The government and its partners in civil society are currently taking measures to accelerate the implementation of interventions that deliver comprehensive care and treatment to decrease illness and death, promote acceptance of HIV confidential counseling and testing, and strengthen local health-care capacity. Health-care facilities that are already in the frontlines of the fight against HIV/AIDS/STI/TB are scaling up prevention, care and treatment activities.

The national experience and momentum gathered accord much support to Ethiopia's effort to scale up its HIV/AIDS/STI/TB interventions. However, a shortage of trained manpower, a lack of adequate technical support, and constraints with scientific evidence to guide policy and programmatic decisions, have emerged as major challenges. The complexity of the response to HIV/AIDS/STI/TB calls for strong technical support to national and regional programs. In the Oromia region of Southwest Ethiopia, there is a strong need to scale up training at in-service and pre-service levels, target monitoring and evaluation activities, and establish linkages to national and international partners.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV/AIDS, STI, and TB Prevention (NCHSTP): By 2010, work with other countries, international organizations, the Department of State, the U.S. Agency for International Development (USAID), the Department of Health and Human Services (HHS), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among 15 to 24 years of age and to initiate, expand or strengthen HIV/AIDS prevention, care, treatment and support globally.

This announcement is only for non-research activities supported by HHS. If an applicant proposes research, we will not review the application. For the definition of ''research,'' please see the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspo111.htm*.

Activities

Awardee activities for this program are as follows:

1. Conduct needs assessment among students and faculty at universities and teaching hospitals in the Oromia region of Southwest Ethiopia to determine risk factors, target behaviors, barriers, facilitators, reinforcement mechanisms, communication channels, availability of care, family demographics/situations, etc. to inform the development and implementation of prevention, care and treatment programs.

2. Organize and procure necessary equipment and supplies in a competitive and transparent process, and coordinate care, trainings and targeted monitoring and evaluations.

3. Develop/adapt or organize tools, such as operations manuals, training manuals, and guidelines, in the areas of HIV/AIDS; prevention of mother-to-child transmission (PMTCT); confidential counseling and testing; STI, TB, laboratory, and other technical areas as deemed appropriate for provision of in-patient and out-patient care, in-service training; and targeted monitoring and evaluations.

3.5. Develop and implement a program to make confidential HIV counseling and testing as a routine part of medical care in teaching hospitals in the Oromia region of Southwest Ethiopia.

4. Institute the needed administrative and functional arrangements to coordinate the day-to-day activity of the project to guarantee effectiveness, efficiency, transparency and accountability.

5. Conduct in-service training activities related to HIV/AIDS, PMTCT, confidential counseling and testing, STI, TB, laboratory, and other technical areas as needed at universities and teaching hospitals in the Oromia region of Southwest Ethiopia.

6. Review, update, and institute course outlines and contents for pre-service (undergraduate and post-graduate medical students, nursing students and other paramedical students) training programs to strengthen the training in HIV/AIDS, PMTCT, confidential counseling and testing, STI, TB, laboratory, and other related technical areas at universities and teaching hospitals in the Oromia region of Southwest Ethiopia.

7. Conduct pre-service training in HIV/AIDS, PMTCT, confidential counseling and testing, STI, TB, laboratory, and other related technical areas in all health professional training programs at universities and teaching hospitals in the Oromia region of Southwest Ethiopia.

8. Conduct targeted monitoring and evaluations of project and in identified priority areas that require evidence for perusal in program implementation and in-service and pre-service training, in collaboration with international partners.

9. Conduct reviews and analysis of data and prepare, and disseminate reports and information.

10. Conduct culturally appropriate workshops, seminars and popularization events in local languages related to HIV/AIDS prevention, control,

and treatment in South West Ethiopia, and undertake monitoring and evaluation and re-planning of the project.

11. Conduct HIV/AIDS/STIs prevention following the ABC strategies, control, and treatment activities among students and faculty of universities and teaching hospitals in the Oromia region of Southwest Ethiopia. Grantee may not implement condom social marketing without also implementing abstinence and behavior-change interventions.

12. Institute comprehensive prevention, care and treatment supported by information systems and laboratories at teaching hospitals in the Oromia region of Southwest Ethiopia.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS activities for this program are as follows:

1. HHS will collaborate with the recipient on designing and implementing the activities listed above, including but not limited to, providing technical assistance to develop and implement program activities, training, quality assurance, data management, statistical analysis and presentations, and project evaluation.

2. Monitor project and budget performance, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Assist in the selection of key personnel to be involved in the activities performed under this cooperative agreement.

4. Make available manuals, guidelines or other related materials already developed by HHS-Ethiopia for other similar projects, as well as all policy directives established by the Office of the U.S. Global AIDS Coordinator.

Administration

Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

9. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness, and, for populations engaged in high-risk behaviors,[2] correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B)

- Number of community outreach and/or mass media (radio) programs that are A/B focused.
- Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential counseling and testing

- Number of patients who accept confidential counseling and testing in a health-care setting.
- Number of clients served, direct.
- Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC)

- Number of service outlets/programs, direct and/or indirect.
- Number of clients (OVC) served, direct and/or indirect.
- Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support

- Number of service outlets/programs that provide palliative care, direct and/or indirect.
- Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.
- Number of clients served with palliative care, direct and/or indirect.
- Number of persons trained in providing palliative care, direct.

C. HIV Treatment With ART

- Number of clients enrolled in ART, direct and indirect.
- Number of persons trained in providing ART, direct.

D. Strategic Information

[2] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

- Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

- Project-specific quantifiable milestones to measure:

a. Indigenous capacity-building.

b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $500,000. (This amount is an estimate, and is subject to availability of funds)

Approximate Number of Awards: One.

Approximate Average Award: $100,000.

Floor of Award Range: None.

Ceiling of Award Range: $100,000. (This is the ceiling for the first 12-month budget period)

Anticipated Award Date: September 23, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Assistance will be provided only to universities and teaching hospitals in South West Ethiopia. Applicants must demonstrate a strong commitment to community based, multi-disciplinary team training program that also integrates training, service and research.

Applicants must have a documented track record of working closely with Oromia Regional Health Bureau and the adjoining regions as well as with a number of regional and international institutions of higher education, professional associations and non-governmental organizations (NGOs) and faith based organizations (FBOs). Applicants must have demonstrated capacity to provide training for all cadres of health care professionals deployed to this region of Ethiopia.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program.

III.3. Other

If an applicant requests a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *www.grants.gov*.

Application forms and instructions are available on the HHS/CDC web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 20. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12-point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered
- A complete index to the application and any appendices must be included.
- Your application MUST be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Background—What are the underlying issues related to undertaking this project?
- Goals and Objectives, including Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief
- Work Plan and Description of Project Components and Activities
- Timeline
- Staffing Plan, with Level of Effort
- Understanding—Demonstrate knowledge of the elements involved in implementing this project.
- Performance Measures—What measures will be used to determine if the objectives of the project are being met?
- Budget Justification—How are the costs related to implementing the project justified?
- Budget—what are the costs associated with implementing the project?

The budget and budget justification is needed only for year one of the project period. The budget and budget justification will not be counted in the page limit stated above.

You may include additional information in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information could include, but is not limited to the following:

- Resumes and/or Curriculum Vitas
- Letters of support, etc.
- Job descriptions of proposed key positions to be created for the activity
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms
- Applicant's Corporate Capability Statement
- Letters of Support

1. Evidence of Legal Organizational Structure

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a

nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, *see* the HHS/CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 19, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov*. We consider applications completed online through *Grants.gov* as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to *Grants.gov* on or before the deadline date and time.

If you submit your application electronically with *Grants.gov*, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as having been received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations, are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities, (including program management and operations, and delivery of prevention and care services for which funds are required).
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address

HHS/CDC strongly encourages you to submit electronically at: *www.grants.gov*,

You will be able to download a copy of the application package from *www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov*, or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management Section—AA136, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Plans for Administration and Management of the Project (25 points)

Do the plan, objectives, and methods described meet the strategy and goals of the President's Emergency Plan? Does the described evaluation methodology meet the plans of the project?

2. Technical and Programmatic Approach (20 points)

Does the applicant's proposal demonstrate an understanding of how to develop, promote, implement, monitor and evaluate activities listed above? Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, and measurable and culturally appropriate in Ethiopia to achieve the goals of the Emergency Plan?

3. Ability To Carry Out the Project (20 points)

Does the applicant demonstrate the capability to achieve the purpose of the project and provide the required training and outreach activities in local languages?

4. Personnel (20 points)

Are professional personnel involved in this project qualified, including evidence of experience in working with HIV/AIDS/STI/TB in Sub-Saharan Africa?

5. Understanding the Problem (15 points)

Does the applicant's proposal demonstrate a clear and concise understanding of the general AIDS epidemic and the specific situation in Ethiopia, the policy environment and current training and research needs in Ethiopia?

6. Budget (Not scored, but Evaluated)

Is the itemized budget for conducting the project reasonable and well justified?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review

applications for completeness, and the HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their applications did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel can include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision: While U.S.-based organizations are eligible to apply, we will give preference to existing national/Ethiopian organizations with a successful history of working in the Oromia region of Southwest Ethiopia. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 23, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–8 Public Health System Reporting Requirements
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements

Applicants can find additional information on these requirements on the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Ethiopia.
   f. Additional Requested Information.
2. Annual progress report, due within no later than 90 days after the end of the budget period.
3. Financial status report, no more than 90 days after the end of the budget period.
4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For program technical assistance, contact: Tadesse Wuhib, MD, MPH, Country Director, HHS/CDC-Ethiopia, P.O. Box 1014, Entoto Road, Addis Ababa. Telephone: (Office) 251–1–66–95–33; (Cell) 251–9–228543. E-mail address: *wuhibt@etcdc.com.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–1515. E-mail: *SWynn@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS CDC web site, Internet address: *www.cdc.gov* (click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the web site of the HHS Office of Global Health Affairs, Internet address: *www.globalhealth.gov.*

Dated: August 17, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16817 Filed 8–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthening and Expanding Anti-retroviral Treatment in the Republic of Haiti to HIV/AIDS Infected Populations Through Training, Support and Quality Assurance/Quality Control at Anti-retroviral Sites as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA177.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 19, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307) of the Public Health Service Act, [42 U.S.C. Sections 241 and 2421], as amended and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm*.

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Haiti are to treat at least 25,000 HIV-infected individuals; care for 125,000 HIV-affected individuals, including orphans.

Purpose: An essential element of preventing new cases of HIV in Haiti is to ensure as much of the population as possible has adequate access to screening, treatment, and care facilities. Haiti's HIV prevalence rate in adults is reported to be 5.6 percent, according to the 2004 Annual Report of the Joint United Programme on HIV/AIDS (UNAIDS). Access to prevention and treatment is limited among the Haitian population because of an underdeveloped public health infrastructure and a lack of clinical capacity.

Currently, around 3,000 Haitians infected with HIV receive ARV therapy. However, with funding from the President's Emergency Plan for AIDS Relief, the U.S. Government aims to increase that number dramatically to 7,200 by the end of 2005. To meet the Emergency Plan's goals within the time allotted, applicants must be able to demonstrate they already have experience in training clinicians and laboratory personnel involved in VCT activities, distributing ARVs and in providing palliative care to patients with HIV/AIDS in Haiti.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and with one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP), of the Centers for Disease Control and Prevention (CDC) within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services, and strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS, including CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of ''research,'' please see the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Haiti. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Haiti will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for covering all program areas are as follows:

1. Perform routine quality assurance and quality control (QA/QC) on rapid testing specimens from all sites supported by the Emergency Plan until the Haitian national reference lab is operational.

2. Perform confirmational CD4 testing and analysis to determine clinical eligibility for expansion sites without capacity to conduct such testing.

3. Perform conformational sexually transmitted infection (STI) testing for diagnosis.

4. Provide training in local languages to local health care professionals including physicians, nurses, lab technicians and pharmacy technicians, community health workers, volunteers and appropriate program staff on the following:

a. How to design, implement and evaluate confidential voluntary counseling and testing (VCT) program sites to enable them to provide confidential counseling and rapid testing for HIV/AIDS;

b. The provision of psycho-social support by social workers to people living with HIV/AIDS (PLWHAs) and their families, including bereavement counseling, crisis management, support for orphan and vulnerable children;

c. Clinical care and treatment of HIV/AIDS/TB, opportunistic infection(OI) and highly active anti-retroviral therapy

(HAART); including basic and palliative care;

d. Care for PLWHAs, including counseling PLWHAs engaged in treatment and drug administration, especially for nurses and community health workers;

e. Drug-supply management, forecasting, and packaging (especially for pharmacists);

f. The use of automated laboratory equipment for hematology, biochemistry and biology (especially for lab technicians),

g. How to maintain laboratory equipment;

h. Laboratory safety and proper disposal of biohazardous materials;

i. The use of universal precautions and the management of needle-stick or splash injuries;

j. Post-training follow-up to identify gaps in resources or effectiveness of particular protocols; and

k. Regular routine, in-service trainings in local languages for health service and lab personnel to review new and best practice techniques and solicit ''insider insight''—an account of implementation success and challenges.

5. Implement monitoring and evaluation strategies at each program site, by assessing:

a. Number of trainings held;

b. Number and type of participants;

c. Pre- and post-training evaluation of skills; and

d. Number of equipment maintenance calls.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this announcement.

Administration

The winning applicant must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

9. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

10. Collaborate with the Haitian Ministry of Health (MSPP) and partners to strengthen confidential VCT/prevention of mother-to-child transmission (PMTCT) sites, specialized care and treatment sites and public anti-retroviral (ARV) demonstration sites.

11. Provide equipment and commodities acquired through a transparent and competitive process (excluding ARV drugs) to all VCT/PMTCT sites and public demonstration sites. HHS/CDC will provide ARV drugs to public demonstration sites only.

12. Hire and support of staff.

13. Support for an electronic medical record (EMR) database system, and a surveillance database system for case identification and management.

14. Support for the annual technical review of the National AIDS/TB/STI program in Haiti.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $4,615,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $923,000 (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: None.

Ceiling of Award Range: $923,000.

Anticipated Award Date: September 23, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Public and private non-profit and for-profit organizations may submit applications, such as:

- Public, non-profit organizations
- Private, non-profit organizations
- For-profit organizations
- Small, minority-owned, and women-owned businesses
- Colleges
- Universities
- Hospitals

- Community-based organizations
- Faith-based organizations

In addition, applicants must meet the criteria listed below:

1. Documented experience providing care and treatment in resource constrained, politically unstable countries;

2. Experience in performing extensive HIV/AIDS laboratory diagnostic testing and training;

3. Have documented experience in HIV/AIDS particularly in the provision of basic social services for HIV-infected/affected persons, must have experience with non-facility-based counseling, and must already be integrated into the national HIV/AIDS program; and

4. Documented experience working with populations engaged in high-risk behaviors.[1]

Eligible applicants should also demonstrate a current or past capacity to coordinate their activities with HHS/CDC and other members of the United States Government.

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *www.grants.gov*.

Application forms and instructions are available on the HHS/CDC web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, we will only review the first pages within the page limit
- Font size: 12 point unreduced
- Double-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.
- Submitted in English

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Contribution to the numerical Goals and Objectives of the President's Emergency Plan for AIDS Relief
- Timeline (*e.g.*, GANNT Chart)
- Management of Project Funds and Reporting
- Executive Summary: Provide a clear and concise summary of the proposed goals, major objectives and activities required for achievement of program goals and amount of funding requested for budget year one of this cooperative agreement.
- Laboratory Services

1. Perform routine QA/QC on rapid-testing specimens from all sites supported by the Emergency Plan for AIDS Relief until the national reference lab is operational.

2. Perform confirmational CD4 testing and analysis to determine clinical eligibility of patients for ART at expansion sites that lack the capacity to conduct such testing.

3. Perform confirmational STI testing for diagnosis.

- Training

1. Provide training in local languages to local health care professionals including physicians, nurses, lab technicians and pharmacy technicians, community health workers volunteers and appropriate program staff.

a. Train how to design, implement and evaluate confidential VCT program sites to enable them to provide counseling and rapid testing for HIV/AIDS.

b. Train social workers in providing psycho-social support to PLWHA and their families, including bereavement counseling, crisis management, and support for orphan and vulnerable children.

c. Train health care professionals, in clinical care and treatment of HIV/AIDS/TB, OI and HAART including basic and palliative care.

d. Train nurses and community health workers in care for PLWHAs, including counseling PLWHAs engaged in treatment and drug administration.

e. Train pharmacists in drug-supply commodity management, forecasting, and packaging.

f. Train lab technicians in use of automated laboratory equipment for hematology, biochemistry, biology.

g. Train how to maintain laboratory equipment.

h. Train in laboratory safety and proper disposal of bio-hazardous materials protocol.

i. Train in the use of universal precautions and the management of needle-stick or splash injuries.

j. Provide post-training follow-up to identify gaps in resources or effectiveness of particular protocols.

k. Provide regular routine in-service trainings in local languages for health service and lab personnel to review new and best practice techniques and solicit ''insider insight''—an account of implementation success and challenges.

2. Implement monitoring and evaluation strategies at each program site, assessing:

a. Number of trainings held

b. Number and type of participants

[1] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

c. Pre- and post-training skill levels
d. Number of equipment maintenance calls.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- *Curricula Vitae* or Resumes of current staff who will work on the activity
- Organizational Charts
- Letters of Support
- Project Budget and Justification for year one only

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 19, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov*. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in PMTCT cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and

dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http//www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address

HHS/CDC strongly encourages you to submit electronically at: *www.grants.gov*. You will be able to download a copy of the application package from *www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov*, or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov Web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management-AA177, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Need (20 Points)

To what extent does the applicant justify the need for this program within the target community?

2. Work Plan (25 Points)

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable, and culturally appropriate in Haiti to achieve the goals of the Emergency Plan? Is the plan adequate to carry out the proposed objectives? How complete and comprehensive is the plan for the entire project period? Does the plan

include quantitative process and outcome measures?

3. Monitoring Evaluation and Reporting (20 points)

Does the applicant describe a system for reviewing and adjusting program activities based on monitoring information? Does the plan include indicators for each program milestone and incorporated into the quarterly financial and programmatic reports? Are the indicators drawn from the Emergency Plan Indicator Guide? Will the system generate quarterly financial and program reports to show disbursement of funds, and progress towards achieving the program objectives of the President's Emergency Plan for AIDS Relief?

4. Methods (15 Points)

Are the proposed methods feasible? To what extent will they accomplish the numerical goals of the President's Emergency Plan?

5. Personnel (20 Points)

Do the staff members have appropriate experience, including local language skills? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals?

6. Budget and Justification (Reviewed, but not scored)

Is the itemized budget for conducting the project, along with justification, reasonable, and consistent with the five-year strategy and goals of the President's Emergency Plan activities in Haiti?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Haitian organizations and organizations that have demonstrated working in cultural and political contexts similar to that in Haiti. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 23, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–25 Release and Sharing of Data

Applicants can find additional information on these requirements on the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1.a. Semi-annual Progress Report, due not later than six (6) months after the beginning of the budget period. This progress report must contain the following elements:

a. Current Budget Period Activities and Objectives

b. Current Budget Period Financial Progress.

c. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

d. Additional Requested Information.

e. Financial

2. Financial status and annual reports are due within 30 days of the end of the budget period of this agreement. The reports should detail progress toward achieving program milestones and projected next year activities. The financial status report must show obligations, disbursements and funds remaining by program activity for the year. Indicators must be developed for each program milestone and incorporated into the annual financial and programmatic reports. All indicators need to be drawn from the Emergency Plan Indicator Guide.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Matthew Brown, Project Officer, 3400 Port au Prince Pl., Dulles, VA 20189–3400, Telephone: 1–404–806–9619 or 011–509–222–0200, E-mail: *zjc5@cdc.gov*.

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *VEW4@CDC.GOV*.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the

Web site of the HHS Office of Global Health Affairs, Internet address: *www.globalhealth.gov*.

Dated: August 17, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16822 Filed 8–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthening Prevention, Control and Treatment Activities for HIV/AIDS, Tuberculosis and Sexually Transmitted Infection in the Amhara Region of Northwest Ethiopia, as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: AA135.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application deadline: September 19, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm*.

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Ethiopia are to treat at least 210,000 HIV-infected individuals and care for 1,050,000 HIV-affected individuals, including orphans.

Purpose: The purpose of this funding announcement is to progressively build an indigenous, sustainable response to the national HIV epidemic in Ethiopia through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions, and improved linkages to HIV counseling and testing and HIV treatment by targeting underserved populations in Ethiopia. Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

As one of the key agencies that implement the Emergency Plan, HHS works in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in target countries, including Ethiopia. In particular, HHS' mission in Ethiopia is to work with Ethiopian and international partners to develop and apply effective interventions to prevent HIV infection and associated illnesses and death from AIDS.

Ethiopia is among the countries most adversely affected by the HIV/AIDS epidemic and TB. STIs are highly prevalent in Ethiopia and contribute to morbidity and mortality from HIV/AIDS. Ethiopia has one of the largest populations of HIV-infected persons in the world. By the end of 2003 an estimated 1.5 million adults in Ethiopia were HIV-positive. The estimated percentage of Ethiopians age 15 to 49 infected with HIV is 4.4 percent, and there have been over a million cumulative deaths from AIDS. In Ethiopia approximately 200,000 children are currently living with HIV, and AIDS has orphaned over 500,000 children.

Given the complex nature of the HIV/AIDS epidemic in Ethiopia, forging a strong multi-sectoral and multi-level partnership with broad stakeholder involvement is imperative. The Government of Ethiopia has therefore adopted a responsive HIV/AIDS/STI/TB program, and its implementation mechanisms have been in place since 1998. Ethiopia is currently taking measures to accelerate the implementation of interventions that deliver comprehensive care to decrease illness and death, promote acceptance of HIV counseling and confidential voluntary testing, and strengthen local health care capacity. Health care facilities that are already in the frontlines of the fight against HIV/AIDS/STI/TB are scaling up prevention, care, support, and treatment across the country, with significant assistance from the President's Emergency Plan for AIDS Relief.

A shortage of trained care providers and lack of adequate technical support, and scientific evidence to guide policy and program decisions are major challenges. The complexity of the response to HIV/AIDS/STI/TB necessitates strong technical support to national and regional programs. Scaling up training at in-service and pre-service levels, targeted monitoring and evaluations, and linkages to national and international partners are all needed. These program needs in Northwest Ethiopia are best met by universities, their teaching hospitals and catchment health facilities, working in partnership with the Regional Health Bureau, and the Ethiopian Ministry of Health (MOH) and sister institutions in-country and overseas.

The purpose of this project is to strengthen HIV/AIDS/sexually transmitted infection (STI)/tuberculosis (TB) prevention and control efforts in the Amhara region of Northwest Ethiopia. The project will (1) improve HIV/AIDS/STI/TB prevention by using the ''ABC strategy'' (abstinence, be faithful, and, for populations engaged in high-risk behaviors,[1] correct and

[1] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money

consistent condom use),[2] and control and treatment programs in the Amhara region of Northwest Ethiopia; (2) strengthen training in HIV/AIDS/STI/TB at university-affiliated teaching hospitals in the Amhara region of Northwest Ethiopia and their outreach training facilities; (3) establish a technical support and training unit to assist university-affiliated teaching hospitals HIV/AIDS/STI/TB program implementation within their catchment areas in the Amhara region of Northwest Ethiopia; (4) prevent, control, and treat HIV/AIDS/STI among students and faculty of universities in the Amhara region of Northwest Ethiopia; and (5) develop the health system and infrastructure important for the delivery of HIV/AIDS/STI/TB care at university-affiliated teaching hospitals in the Amhara region of Northwest Ethiopia; (6) implement HIV/AIDS/STI/TB-targeted monitoring and evaluation for these programs.

This collaborative initiative will change the focus and activities of universities and their teaching hospitals and affiliated health facilities in the Amhara region of Northwest Ethiopia. It will enable these universities to strengthen and improve the quality of care offered at their affiliated hospitals, and improve HIV/AIDS/STI/TB training provided to all cadres of health professionals trained at the universities, its teaching hospital and catchment facilities. It will strengthen the capacity of the university to support in-service training for the Amhara Region and adjoining regions with no institutions of higher education; conduct targeted monitoring and evaluations; assist in development and adaptation into local languages of technical materials for local use; and provide technical support to the regional and national Ethiopian HIV/AIDS/STI/TB programs. It will serve as a demonstration site for other training facilities in the region; and prepare the universities for collaboration with other institutions of higher education in Ethiopia, and for twinning with other institutions overseas, including in the United States.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and one (or more) of the following performance goal(s) for the National Center for HIV, Sexually Transmitted Diseases and Tuberculosis Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services and to strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS, including CDC. If applicants propose research, HHS/CDC will not review the application. For the definition of ''research,'' please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspo111.htm*.

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Ethiopia. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable, progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as, progress towards the sustainability of activities.

Applications should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Haiti will review as part of an annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section.

HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance towards achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Conduct needs assessment among the students and faculty at universities and teaching hospitals in the Amhara region of Northwest Ethiopia to determine risk factors, target behaviors, barriers, facilitators, reinforcement mechanisms, communication channels, availability of care, etc. to inform the development of prevention, care and treatment programs.

2. Organize and procure necessary equipment and supplies in a transparent and competitive process; and coordinate interventions, trainings and targeted monitoring and evaluations.

3. Develop/adapt or organize tools, such as operations manuals, training manuals, and guidelines in local languages, in the areas of HIV/AIDS; prevention of mother-to-child transmission (PMTCT); confidential voluntary counseling and testing (VCT); STI; TB; laboratory; and other technical areas, as deemed appropriate, for provision of in-patient and out-patient care; in-service training; and targeted monitoring and evaluations.

4. Institute the needed administrative and functional arrangements to coordinate the day-to-day activities of the project to guarantee effectiveness, efficiency, transparency and accountability.

5. Conduct in-service training activities in local languages related to HIV/AIDS, PMTCT, confidential VCT, STI, TB, laboratory, and other technical areas, as needed at universities and teaching hospitals in the Amhara region of Northwest Ethiopia.

6. Review, update, and institute course outlines and contents for pre-

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or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

[2] Prevention interventions directed toward behavior change should promote the ABC model. Methods and strategies should emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by populations engaged in high-risk behaviors. Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing the abstinence and faithfulness behavior-change interventions outlined above.

service (undergraduate and post-graduate medical students, nursing students and other paramedical students) training programs in local languages to strengthen the training in HIV/AIDS, PMTCT, confidential VCT, STI, TB, laboratory, and other related technical areas at universities and teaching hospitals in the Amhara region of Northwest Ethiopia.

7. Conduct pre-service training in HIV/AIDS, PMTCT, VCT, STI, TB, laboratory, and other related technical areas in all health professional training programs at universities and teaching hospitals in the Amhara region of Northwest Ethiopia.

8. Conduct targeted monitoring and evaluations of the project in identified priority areas that require evidence for implementation and in-service and pre-service training in collaboration with international partners.

9. Conduct reviews and analysis of data and prepare, and disseminate reports and information.

10. Conduct cultural appropriate workshops, seminars and popularization events in local languages related to HIV/AIDS prevention, control, and treatment in the region; and undertake monitoring and evaluation and planning of the project at universities and teaching hospitals in the Amhara region of Northwest Ethiopia. Grantee many not implement condom social marketing without also implementing abstinence and behavior change interventions.

11. Conduct HIV/AIDS/STIs prevention following the ABC model [3], as well as control, and treatment activities among students and faculty at universities and teaching hospitals in the Amhara region of Northwest Ethiopia.

12. Institute comprehensive prevention, care and treatment services supported by information systems and laboratories at teaching hospitals in the Amhara region of Northwest Ethiopia.

Administration: The winning applicant must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS/CDC activities for this program are as follows:

1. Provide scientific and technical assistance in developing the awardee's operational plan.

2. Provide ongoing technical assistance in program implementation.

3. Assist the awardee in assessments of the program's operations to determine the overall effectiveness of the program, including developing a monitoring and evaluation tool for the activities in the program.

4. Participate in training of health staff.

5. Provide technical assistance from HHS-headquarters and the in-country HHS office in Ethiopia to assure other related U.S. Government activities are well-coordinated with the national program.

6. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

7. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

8. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

9. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

10. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

11. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

12. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

13. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

14. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

15. Make available manuals, guidelines or other related materials already developed by HHS-Ethiopia for other similar projects.

Technical assistance and training may be provided directly by HHS/CDC staff or through organizations that have successfully competed for funding under a separate HHS/CDC contract.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $500,000.

Approximate Number of Awards: One.

Approximate Average Award: $100,000. (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: None.

Ceiling of Award Range: $100,000.

Anticipated Award Date: September 23, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and

[3] Prevention interventions directed toward behavior change should promote the ABC model. Methods and strategies should emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by populations engaged in high-risk behaviors. Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing the abstinence and faithfulness behavior-change interventions outlined above.

the determination that continued funding is in the best interest of the Federal Government, through the President's Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Assistance will be provided only to universities and teaching hospitals in Northwest Ethiopia. Applicants must demonstrate a strong commitment to community based, multi-disciplinary team training program that also integrates training, service and research.

Applicants must have a documented track record of working closely with Amhara Regional Health Bureau and the adjoining regions as well as with a number of regional and international institutions of higher education, professional associations and non-governmental organizations (NGOs) and faith based organizations (FBOs). Applicants must have demonstrated capacity to provide training for all cadres of health care professionals deployed to this region of Ethiopia.

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, we will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *www.grants.gov.*

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 20. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12-point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered.
- A complete index to the application and any appendices must be included.
- Your application MUST be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Background—What are the underlying issues related to undertaking this project?
- Objectives—What objectives will be achieved by undertaking this project?
- Methods—What methods will be used to achieve stated objectives?
- Timeline—What is the timeframe for completing the stated objectives?
- Staff—What staff will be employed to carry out the project?
- Understanding—Demonstrate knowledge of the elements involved in implementing this project.
- Performance Measures—What measures will be used to determine if the objectives of the project are being met?
- Budget Justification—How are the costs related to implementing the project justified?
- Budget—What are the costs associated with implementing the project?

We need the budget and budget justification only for year one of the project period. The budget and budget justification will not count toward the page limit stated above.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include, but is not limited to:

- Resumes and/or curriculum vitae
- Letters of Support
- Job descriptions of proposed key positions to be created for the activity
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms
- Applicant's Corporate Capability Statement
- Evidence of Legal Organizational Structure

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2.Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 19, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov.* We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov.* We will consider

electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations, are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities, (including program management and operations, and delivery of prevention and care services for which funds are required).
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities: The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, ''Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: Electronic Submission: HHS/CDC strongly encourages you to submit electronically at: *www.grants.gov*. You will be able to download a copy of the application package from *www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov*, or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Paper Submission: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management Section—AA135, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and will be an element of evaluation.

An objective review panel appointed by HHS will evaluate each application against the following criteria:

1. Plans for Administration and Management of the Project (25 Points)

Do the plan, objectives, and methods described meet the objectives of the President's Emergency Plan? Does the adequacy of described evaluation methodology meet the plans of the project? Does the application include an overall design strategy, including measurable time lines, clear monitoring and evaluation procedures, and specific activities for meeting the proposed objectives? Does the applicant describe a plan to progressively build the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

2. Technical and Programmatic Approach (20 Points)

Does the applicant's proposal demonstrate an understanding of how to develop, promote, implement, monitor and evaluate activities listed above?

3. Ability to Carry Out the Project (20 Points)

Does the applicant provide a clear plan for the administration and management of the proposed activities, to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures?

4. Personnel (20 Points)

Are the professional personnel involved in this project qualified? Do they have experience working with HIV/AIDS/STI/TB? Are they able to communicate effectively in the local languages?

5. Understanding the Problem (15 Points)

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in Ethiopia and meet the goals of the Emergency Plan? Does the applicant's proposal demonstrate a clear and concise understanding of the general AIDS epidemic situation, the policy environment and current training and research needs in Ethiopia?

6. Budget (Not Scored, But Evaluated)

Is the itemized budget for conducting the project reasonable and well justified?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Ethiopian organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 23, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS5161–1 application in the Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have filled out the form, attach it to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Annual progress report, due 90 days after the end of the budget period.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Tadesse Wuhib, MD, MPH, Country Director, CDC-Ethiopia, PO Box 1014, Entoto Road, Addis Ababa, Telephone: (Office) 251–1–66–95–33; (Cell) 251–9–228543, E-mail address: *wuhibt@etcdc.com.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *SWynn@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: www.cdc.gov. Click on ''Funding'', then ''Grants and Cooperative Agreements.''

Dated: August 17, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16832 Filed 8–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of Multi-Disciplinary HIV Care for Sexually Abused Children in Zambia, as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA172.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 19, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Zambia are to treat at least 120,000 HIV-infected individuals and care for 600,000 HIV-affected individuals, including orphans.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of

assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

To carry out its activities in these countries, HHS works in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. In particular, HHS' mission in Zambia is to work with the Ministry of Health, and its partners, to develop and apply effective interventions to prevent and treat HIV infection and associated illness and death from AIDS.

Purpose: The Demographic and Health Survey (2001-2002) from Zambia indicates that in the age group 15 to 19 the HIV prevalence among women is 6.6 percent, compared to a prevalence of 1.9 percent in men of the same age. Reports from South Africa indicate that death rates among girls between 15 to 19 years have increased by over 50 percent in the last ten years. In the last few years, there has been a disturbing rise in the number of cases of child rape and sexual abuse reported in the media. In some sub-Saharan African countries, including Zambia, there are myths surrounding HIV, such as that sex with a virgin can cure a man of HIV. In addition, older men seek sex with very young partners in the belief the young are free from HIV. These practices expose young children to HIV infection, and have consequences on the child's physical, psychological and social development. The actual extent of this problem is often unclear, because the perpetrators are sometimes close family members.

The University Teaching Hospital (UTH) is the main referral hospital for pediatric care in Zambia. Cases of sexual abuse reported to the hospital are seen first at the Police Post based there. In 2003, a total of 659 cases of child sexual abuse were reported at the Police Post. Currently, 15 to 20 sexually abused children are seen in the clinic each week. However, many other cases might be missed because of a lack of awareness of attending clinicians of evidence of sexual abuse, or reluctance to discuss such issues with parents and guardians. This leads to lost opportunities to provide post-exposure prophylaxis and psychological support to the child, and increases the possibility of HIV infection.

The Zambian UTH Department of Pediatrics, the National AIDS Council Technical Group on Orphans and Vulnerable Children and the Zambian Society for the Prevention of Child Abuse and Neglect (ZSPCAN), in collaboration with international partners, has instituted various activities on child sexual abuse, and the purpose of the program is to strengthen the human capacity in Zambia to provide a child-friendly and parent sensitive environment in which to provide counseling and support; clinical care; and ongoing care including post-exposure prophylaxis and anti-retroviral treatment (ART), as required, to children who have suffered sexual abuse.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and one (or more) of the following performance goal(s) for the National Center for HIV, Sexually Transmitted Diseases and Tuberculosis Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services and to strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS, including CDC. If research is proposed, the application will not be reviewed. For the definition of ''research,'' please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Zambia. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable, progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as, progress towards the sustainability of activities.

Applications should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Zambia will review as part of an annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance towards achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Train health workers in the Zambia UTH Departments of Pediatrics and Obstetrics and Gynecology to recognize and care for child sexual abuse.
2. Train health care workers to provide post-exposure prophylaxis and ART, in general, for pediatric HIV care.
3. Provide culturally and age-appropriate psycho-social support in local languages to sexually abused children and their families.
4. Develop a system to record accurately cases of child sexual abuse, and to follow up such cases in the community.
5. Strengthen links with the Zambian Society for Child Abuse and Neglect, and design activities to increase community awareness.
6. Develop a multi-disciplinary team to provide pediatric HIV care.

Administration: The winning applicant must comply with all HHS

management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS/CDC activities for this program are as follows:

1. Provide scientific and technical assistance in developing the awardee's operational plan.

2. Provide ongoing technical assistance in program implementation.

3. Assist the awardee in assessments of the program's operations to determine the overall effectiveness of the program, including developing a monitoring and evaluation tool for the activities in the program.

4. Design the program activities in conjunction with the UTH Department of Pediatrics and other partners.

5. Participate in training of health staff.

6. Provide technical assistance from HHS-headquarters and the in-country HHS office in Zambia to assure other related U.S. Government activities are well-coordinated with the national program.

7. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

8. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

9. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

10. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

11. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

12. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

13. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

14. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

15. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $225,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $75,000. (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: None.

Ceiling of Award Range: $95,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 23, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the annual Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

We will provide assistance only to university teaching hospitals that are referral hospitals and provide a full range of care, including pediatric care, and have a mandate and specialty in caring for sexually abused children. Eligible applicants must already have established activities to monitor cases of child sexual abuse by working with the local police post, to which all such cases, are initially referred.

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, we will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement on *http://www.grants.gov*.

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty

accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Application must be written in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Justification for program.
- Eligibility and organizational capacity.
- Proposed program plan, including goals, objectives and plan of operation.
- Program Management, staffing, collaborations, and infrastructure.
- Evaluation plan.
- Budget and justification (will not be counted in the stated page limit).

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitae.
- Organizational Charts.
- Letters of support.
- Applicants must document eligibility by submitting verification of their Zambian registration status.
- Job descriptions of proposed key positions to be created for the activity.
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms.
- Applicant's Corporate Capability Statement.
- Evidence of Legal Organizational Structure.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 19, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

You may submit your application electronically at *http://www.grants.gov*. We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after the closing date because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your carrier. If you still have a question, contact the PGO-TIM staff at (770)488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a

substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at: *http://www.grants.gov*. You will be able to download a copy of the application package from *http://www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov*, or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov Web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

or

Submit the original and two hard copies of your application by mail or express delivery service to the following address:

Technical Information Management—AA172, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness

must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. *Plan (30 Points).* Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in Zambia and meet the goals of the Emergency Plan? Is the plan adequate to carry out the proposed objectives? How complete and comprehensive is the plan for the entire project period? Does the plan include a quantitative process to measure outcomes?

2. *Personnel (20 Points).* Do the staff members have appropriate experience? Are the staff roles clearly defined? As described, will the staff be sufficient to meet the goals of the Emergency Plan?

3. *Need (20 Points).* To what extent does the applicant justify the need for this program within the target community?

4. *Methods (15 Points).* Does the application include an overall design strategy, including measurable time lines, clear monitoring and evaluation procedures, and specific activities for meeting the proposed objectives? Does the applicant describe a plan to build progressively the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

5. *Ability to carry out the project (15 Points).* Does the applicant provide a clear plan for the administration and management of the proposed activities, to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures?

6. *Budget and Justification* (Reviewed, but not scored).

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 23, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–6 Patient Care
- AR–10 Smoke-Free Workplace Requirements

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

An additional Certifications form from the PHS5161–1 application needs to be included in the Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have filled out the form, please attach it to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Zambia.

f. Additional Requested Information.

2. Financial status report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, due no later than 90 days after the end of the project period.

4. Annual progress report, due no later than 90 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Zambia.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact:

Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact:

Marc Bulterys, Project Officer, 1600 Clifton Road MS E–04, Atlanta, GA 30333, Telephone: 011 260 1 250 955 ext 246, E-mail: *bulterysm@cdczm.org.*

For financial, grants management, or budget assistance, contact:

Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770/488–1515, E-mail: *zbx6@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity

announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 17, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16838 Filed 8–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0442]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Drug Administration Recall Regulations (Guidelines)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 23, 2005.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food and Drug Administration Recall Regulations (Guidelines)—(OMB Control Number 0910–0249)—Extension

Section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371) and part 7 (21 CFR part 7), subpart C sets forth the recall regulations (guidelines) and provides guidance to manufacturers on recall responsibilities. The guidelines apply to all FDA-regulated products (i.e., food, including animal feed; drugs, including animal drugs; medical devices, including in vitro diagnostic products; cosmetics; and biological products intended for human use). These responsibilities include development of a recall strategy that requires time by the firm to determine the actions or procedures required to manage the recall; providing FDA with complete details of the recall including reason(s) for the removal or correction, risk evaluation, quantity produced, distribution information, firm's recall strategy, a copy of any recall communication(s), and a contact official; notifying direct accounts of the recall, providing guidance regarding further distribution, giving instructions as to what to do with the product, providing recipients with a ready means of reporting to the recalling firm; submitting periodic status reports so that FDA may assess the progress of the recall. Status report information may be determined by, among other things evaluation return reply cards, effectiveness checks and product returns; and providing the opportunity for a firm to request in writing that FDA terminate the recall.

A search of the FDA database was performed to determine the number of recalls that took place during fiscal year 2003. The resulting number of recalls from this database search (2,375) is used in estimating the current annual reporting burden for this report. FDA estimates the total annual industry burden to collect and provide the above information to 201,875 burden hours.

The following is a summary of the estimated annual burden hours for recalling firms (manufacturers, processors, and distributors) to comply with the voluntary reporting requirements of FDA's recall regulations.

Recognizing that there may be a vast difference in the information collection and reporting time involved in different recalls of FDA's regulated products, FDA estimates on average the burden of collection for recall information to be as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Recall Strategy	2,375	1	2,375	15	35,625
Firm Initiated Recall & Public Warnings Recall Communications	2,375	1	2,375	20	47,500
Recall Status Reports & Followup	2,375	4	9,500	10	95,000
Termination of a Recall	2,375	1	2,375	10	23,750
Total					201,875

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

The annual reporting burdens are explained as follows:

Recall Strategy

Requests firms to develop a recall strategy including provision for public warnings and effectiveness checks. Under this portion of the collection of information, the agency estimates it will receive 2,375 responses annually.

Firm Initiated Recall and Recall Communications

Requests firms that voluntarily remove or correct foods and drugs (human or animal), cosmetics, medical devices, and biologicals to immediately notify the appropriate FDA district office of such actions. The firm is to provide complete details of the recall reason, risk, evaluation, quantity produced, distribution information, firm's recall strategy, and a contact official as well as requires firms to

notify their direct accounts of the recall and to provide recipients with a ready means of reporting to the recalling firm. Under these portions of the collection of information, the agency estimates it will receive 2,375 responses annually for each.

Recall Status Reports

Requests that recalling firms provide periodic status reports so FDA can ascertain the progress of the recall. This collection of information will generate approximately 9,500 responses annually.

In the **Federal Register** of October 12, 2004 (69 FR 60630), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Dated: August 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16846 Filed 8–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0327]

Agency Information Collection Activities; Proposed Collection; Comment Request; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the blood establishment registration and product listing requirements and Form FDA 2830.

DATES: Submit written or electronic comments on the collection of information by October 24, 2005.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

Blood Establishment Registration and Product Listing, Form FDA 2830—21 CFR Part 607 (OMB Control Number 0910–0052)—Extension

Under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, on or before December 31 of each year, his or her name, place of business, and all such establishments submit, among other information, a listing of all drug or device products manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution. In part 607 (21 CFR part 607), FDA has issued regulations implementing these requirements for manufacturers of human blood and blood products.

Section 607.20(a) requires certain establishments that engage in the manufacture of blood products to register and to submit a list of blood products in commercial distribution. Section 607.21 requires the establishments entering into the manufacturing of blood products to register within 5 days after beginning such operation and to submit a blood product listing at that time. In addition, establishments are required to register annually between November 15 and December 31 and update their blood product listing every June and December of each year. Section 607.22 requires the use of Form FDA 2830, Blood Establishment Registration and Product Listing, for initial registration, for annual registration, and for blood product listing. Section 607.25 indicates the information required for establishment registration and blood product listing. Section 607.26 requires certain changes to be submitted as amendments to the establishment registration within 5 days of such changes. Section 607.30 requires establishments to update their blood product listing information every June and December, or at the discretion of the registrant at the time the change occurs. Section 607.31 requires that additional blood product listing information be provided upon FDA request. Section 607.40 requires foreign blood product establishments to register and submit the blood product listing information, the name and address of the establishment, and the name of the individual responsible for submitting blood product listing information as well as the name, address, and phone number of its U.S. agent.

Among other uses, this information assists FDA in its inspections of facilities, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the Nation's blood supply. Form FDA 2830 is used to collect this information.

Respondents to this collection of information are human blood and plasma donor centers, blood banks, certain transfusion services, other blood product manufacturers, and

independent laboratories that engage in quality control and testing for registered blood product establishments.

FDA estimates the burden of this collection of information based upon information obtained from the Center for Biologics Evaluation and Research's database and FDA experience with the blood establishment registration and product listing requirements.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form FDA 2830	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
607.20(a), 607.21, 607.22, 607.25, and 607.40	Initial registration	100	1	100	1	100
607.21, 607.22, 607.25, 607.26, 607.31, and 607.40	Reregistration	2,775	1	2,775	0.5	1,388
607.21, 607.25, 607.30, 607.31, and 607.40	Product listing update	180	1	180	0.25	45
Total						1,533

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

Dated: August 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16847 Filed 8–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee, the National Mammography Quality Assurance Advisory Committee, the Device Good Manufacturing Practice Advisory Committee, and the Technical Electronic Products Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2006.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: Send all nominations and curricula vitae to the following contact persons in table 1 of this document:

TABLE 1.

Contact Person	Committee/Panel
Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022, or e-mail: *NJP@CDRH.FDA.GOV*	Certain Device Panels of the Medical Devices Advisory Committee
Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, e-mail: *CAF@CDRH.FDA.GOV*	National Mammography Quality Assurance Advisory Committee
Collin L. Figueroa, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, e-mail: *CXF@CDRH.FDA.GOV*	Device Good Manufacturing Practice Advisory Committee
Richard V. Kaczmarek, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, e-mail: *RVK@CDRH.FDA.GOV*	Technical Electronic Product Radiation Safety Standards Committee

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0450, ext. 114, e-mail: *KLW@CDRH.FDA.GOV*.

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations of voting members for vacancies listed as follows:

TABLE 2.

Committee/Panel Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee—anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia	2	Immediately
Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee—doctors of medicine or philosophy with experience in clinical chemistry (e.g., cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology	2	March 1, 2006
Dental Products Panel of the Medical Devices Advisory Committee—dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, temporomandibular joint (TMJ) dysfunction, tissue engineering, and dental anatomy	2	November 1, 2005
Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee—gastroenterologists, urologists and nephrologists	1 1	Immediately January 1, 2006
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee—surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians	2 2	September 1, 2005 September 1, 2006
General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee—internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers or microbiologists/infection control practitioners or experts	3 4	Immediately January 1, 2006
Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee—hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and homeostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive and prognostic biomarkers	3	March 1, 2006
Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee—experts with broad, cross-cutting scientific, clinical, analytical or mediation skills	1	October 1, 2005
Microbiology Devices Panel of the Medical Devices Advisory Committee—infectious disease clinicians, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists	3 2	Immediately March 1, 2006
Neurological Devices Panel of the Medical Devices Advisory Committee—neurosurgeons (cerebrovascular and pediatric), neurologists (stroke, pediatric, pain management, and movement disorders), interventional neuroradiologists, psychiatrists, and biostatisticians	3	December 1, 2005

TABLE 2.—Continued

Committee/Panel Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee—experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing	1	February 1, 2006
Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee—orthopedic surgeons (joint, spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians	1 1 3	Immediately September 1, 2005 September 1, 2006
Radiological Devices Panel of the Medical Devices Advisory Committee—physicians with experience in general radiology, mammography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging and image analysis	2	February 1, 2006
National Mammography Quality Assurance Advisory Committee—one medical physicist, one physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography	2	February 1, 2006
Device Good Manufacturing Practice Advisory Committee: Nine vacancies occurring immediately; three government representatives, two industry representatives, two public representatives and two health professionals	9	Immediately
Technical Electronic Product Radiation Safety Standards Committee—Five vacancies occurring immediately, two government representatives, one industry representative and two general public representatives; five vacancies occurring January 1, 2006, one industry representative, two government representatives and two general public representatives	5 5	Immediately January 1, 2006

II. Functions

A. Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area performs the following duties: (1) Advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories, (2) advises on any possible risks to health associated with the use of devices, (3) advises on formulation of product development protocols, (4) reviews premarket approval applications for medical devices, (5) reviews guidelines and guidance documents, (6) recommends exemption of certain devices from the application of portions of the act, (7) advises on the necessity to ban a device, and (8) responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

B. National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on the following topics: (1) Developing appropriate quality standards and regulations for mammography facilities, (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program, (3) developing regulations with respect to sanctions, (4) developing procedures for monitoring compliance with standards, (5) establishing a mechanism to investigate consumer complaints, (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities, (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas, (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999, and (9) determining the costs and benefits of compliance with these requirements.

C. Device Good Manufacturing Practice Advisory Committee

The functions of the committee are to review proposed regulations issuance regarding good manufacturing practices governing the methods used in, and the facilities and controls used for manufacture, packaging, storage, installation, and servicing of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Section 520 of the act (21 U.S.C. 360(j)), as amended, provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State, or local government; (2) two shall be representatives of interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be representatives of the interests of the general public.

D. Technical Electronic Product Radiation Safety Standards Committee

The function of the committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Section 534(f) of the act (21 U.S.C. 360kk(f)), as amended by the Safe Medical Devices Act of 1990, provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

III. Qualifications

A. Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

B. National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise.

The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

C. Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership as a government representative or health professional should have knowledge of or expertise in any one or more of the following areas: Quality assurance concerning the design, manufacture, and use of medical devices. To be eligible for selection as a representative of the general public or industry, nominees should possess appropriate qualifications to understand and contribute to the committee's work. The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

D. Technical Electronic Product Radiation Safety Standards Committee

Persons nominated must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations shall include complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: August 18, 2005.

Scott Gottlieb,

Deputy Commissioner for Policy.

[FR Doc. 05–16845 Filed 8–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 8, 2005, from 8 a.m. to 6 p.m., and on September 9, 2005, from 8 a.m. to 1 p.m.

Location: Hilton Washington DC North/Gaithersburg, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 8, 2005, the committee will hear a presentation by the Office of Surveillance and Biometrics in the Center for Devices and Radiological Health outlining their responsibility for the review of postmarket study design. The committee will also hear an update on the status of recent devices brought before the committee. Subsequently, the committee will discuss, make recommendations, and vote on a premarket approval application for a hip joint metal/metal semi-constrained resurfacing hybrid prosthesis (cemented femoral component and uncemented acetabular component). The device is intended to relieve hip pain and improve hip function in patients who have adequate bone stock and are at risk of requiring more than one hip joint replacement over their lifetimes.

On September 9, 2005, the committee will discuss the design of clinical studies for spinal devices indicated for treatment of mild to moderate low back pain.

Background information for the topics, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panel/index.html*. Material for the September 8 session will be posted September 7, 2005; material for the September 9 session will be posted September 8, 2005.

Procedure: On September 8, 2005, from 8:30 a.m. to 6 p.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 29, 2005. On September 8, 2005, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of the committee deliberations and for approximately 30 minutes near the end of the deliberations. On September 9, 2005, oral presentations from the public will be scheduled from approximately 8:30 a.m. to 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 29, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On September 8, 2005, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to pending issues and applications.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks at 240–276–0450, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 2005.

Scott Gottlieb,

Deputy Commissioner for Policy.

[FR Doc. 05–16787 Filed 8–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0240]

Draft Guidance for Industry on Gingivitis: Development and Evaluation of Drugs for Treatment or Prevention; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 28, 2005, the comment period for the draft guidance for industry entitled ''Gingivitis: Development and Evaluation of Drugs for Treatment or Prevention.'' The draft guidance is intended to assist sponsors in conducting clinical trials for drug products that treat or prevent gingivitis. It addresses specific protocol design elements as well as general concerns about drugs for this indication. FDA published a notice of availability of the draft guidance, with a comment period that closes on August 29, 2005. FDA is taking this action in response to a request for extension of the comment period to allow interested persons additional time to review the draft guidance and submit comments.

DATES: Submit written or electronic comments on the draft guidance by October 28, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Frederick Hyman, Center for Drug Evaluation and Research (HFD–540), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2020.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 28, 2005 (70 FR 37102), FDA published a notice announcing the availability of a draft guidance for industry entitled ''Gingivitis: Development and Evaluation of Drugs for Treatment or Prevention.'' This guidance is intended to assist sponsors in conducting clinical trials for drug products that treat or prevent gingivitis. The guidance document provides assistance in several ways. It addresses specific design elements such as choosing inclusionary and exclusionary criteria, selecting relevant endpoints, assessing gingivitis, determining the clinical significance of the effect, and collecting meaningful safety data. It also provides comments on general concerns (e.g., prevention versus treatment claims, over-the-counter versus prescription status, special population enrollment, and nonclinical development issues related to products that are intended for administration within the oral cavity for the treatment or prevention of gingivitis). The initial comment period closes on August 29, 2005.

II. Extension of Time

On July 15, 2005, the Consumer Healthcare Products Association requested a 60-day extension beyond the August 29, 2005, deadline for the submission of comments. The request stated that additional time is needed to assemble a comprehensive submission that requires coordinating extensive input from representatives of their member companies. FDA considers an extension of time for submission of comments to be in the public interest. Accordingly, FDA is extending the comment period for 60 days to October 28, 2005, as requested.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16754 Filed 8–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; amendment.

SUMMARY: The Health Resources and Services Administration is amending a notice that appeared in the **Federal Register** of July 8, 2005, FR Doc. 13422, pages 39517–38518, requesting nominations for voting members to fill three vacancies on the Advisory Commission on Childhood Vaccines. The deadline date for receiving nominations was on or before August 8, 2005. This document amends the notice by extending the deadline date for receiving nominations.

DATES: The agency must receive nominations on or before September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Lee at 301–443–2124 or e-mail *clee@hrsa.gov*.

Dated: August 18, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–16789 Filed 8–23–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: September 8, 2005, 1 p.m.–7:30 p.m.; September 9, 2005, 8:30 a.m.–6 p.m.; and September 10, 2005, 9 a.m.–5:30 p.m.

Place: Hamilton Crowne Plaza, 1001 14th Street NW., Washington, DC 20005, 202–682–0111.

Status: The meeting will be open to the public.

Agenda: The Council will continue its discussion on the National Health Service Corps legislation in preparation for the upcoming reauthorization. Program staff and Agency management will provide guidance on program operations possible implications of legislative changes.

For Further Information Contact: Tira Robinson-Patterson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857; telephone: (301) 594–4140.

Dated: August 17, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–16791 Filed 8–23–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: September 29, 2005, 8:30 a.m.–4:30 p.m. and September 30, 2005, 8 a.m.–2 p.m.

Place: The Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting the Advisory Committee will begin work on its sixth report which will be submitted to Congress and to the Secretary of the Department of Health and Human Services in November 2006. The report will focus on the role of Title VII, section 747 grant programs in preparing primary care practitioners to care for underserved high-risk groups and vulnerable populations.

Agenda: The meeting on Thursday, September 29, will begin with opening comments from the Chair of the Advisory Committee who will welcome new members. Introductory remarks will be given by the

Division of Medicine and Dentistry, Health Resources and Services Administration, and remarks have been invited from the Bureau of Health Professions and the Agency. A plenary session will follow in which speakers will address the Advisory Committee on the topic of health-outcomes disparities in at-risk populations and the interface of Title VII, section 747 training programs with community groups to enhance care for vulnerable populations. In plenary session and in small workgroups, the Advisory Committee will make plans for the report. There also will be annual elections for a new chair and two vice chairs. An opportunity will be provided for public comment.

On Friday, September 30, the Advisory Committee will open its meeting with an address on the topic of a theoretical framework for understanding vulnerability as it relates to individual patients and patient populations. The Advisory Committee will continue work on the sixth report and select members to serve on a Writing Group whose members will guide the report preparation process. An opportunity will be provided for public comment.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6785. The Web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd*.

Dated: August 17, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–16788 Filed 8–23–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 NIH Advisory Board for Clinical Research.

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: NIH Advisory Board for Clinical Research.

Date: September 23, 2005.

Time: 10 a.m. to 2 p.m.

Agenda: To discuss progress of activities related to research opportunities, training, planning and funding in the NIH intramural clinical research program.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6–1610, Bethesda, MD 20892, 301/496–2897.

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.

Dated: August 17, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16757 Filed 8–23–05; 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 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 meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings 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 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 Advisory Neurological Disorders and Stroke Council, Training, Career Development, and Special Programs Subcommittee.

Date: September 14, 2005.

Open: 8 p.m. to 9:30 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 9:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Margaret Jacobs, Acting Training and Special Programs Officer, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154 MSC 9527, Bethesda, MD 20892–9527, 301–496–4188, *mj22o@nih.gov*.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: September 15, 2005.

Open: 8 a.m. to 9 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: John Marler, MD, Associate Director for Clinical Trials, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2216, Bethesda, MD 20892, (301) 496–9135, *jm137f@niah.gov*.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Basic and Preclinical Programs Subcommittee.

Date: September 15, 2005.

Open: 8 a.m. to 10 a.m.

Agenda: To discuss basic and preclinical programs policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, A Wing, Conference Room 8A–28, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

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.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(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: August 14, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16758 Filed 8–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: October 20, 2005.

Time: 9:30 a.m. to 4 p.m.

Agenda: Review and Analysis of Systems.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Building 38, Room 8N805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

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.pubmedcentral.nih.gov/about/nac.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 17, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16756 Filed 8–23–05; 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, AIDS Cost Effectiveness.

Date: August 25, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Light Microscopy Shared Instrumentation.

Date: September 13–14, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspg@csr.nih.gov*.

Name of Committee: Digestive Sciences Integrated Review Group, Clinical and Integrative Gastrointestinal Pathobiology Study Section.

Date: September 26–27, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov*.

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Cell and Molecular Biology Study Section.

Date: September 26–27, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Intercellular Interactions.

Date: September 29–30, 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: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 DIG B 02 M: Member Conflict: Hepatitis C.

Date: September 30, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@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: August 17, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16755 Filed 8–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council in September 14, 2005.

A portion of the meeting will be open and include discussion of the Center's policy issues, and current administrative, legislative, and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the contact individual listed below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information and a roster of Council members may be obtained by accessing the SAMHSA Advisory Council Web site (*http://www.samhsa.gov*) as soon as possible after the meeting, or by communicating with the contact whose name and telephone number are listed below.

Committee Name: Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment National Advisory Council Meeting Dates: September 14—9 a.m.–5 p.m.

Place: 1 Choke Cherry Road, Sugar Loaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Type: Open: September 14—9 a.m.–5 p.m.

Contact: Cynthia Graham, M.S., Executive Secretary, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1036, Rockville, MD 20857, Telephone: (240) 276–1692, FAX: (240) 276–1690, E-mail: *cynthia.graham@samhsa.hhs.gov*.

Dated: August 15, 2005.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05–16820 Filed 8–23–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–05–047]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Tuesday, October 18, 2005 at 1 p.m. The meeting of the Committee's working groups will be held on Monday, October 3, 2005 at 1:30 p.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting. Requests to make oral presentations or distribute written materials should reach the Coast Guard 5 working days before the meeting at which the presentation will be made. Requests to have written materials distributed to each member of the committee in advance of the meeting should reach the Coast Guard at least 10 working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee meeting will be held at the Galveston Cruise Ship Terminal, 2502 Harborside Drive, Galveston, TX 77553, (409–765–9321). The working groups meeting will be held at the West Gulf Maritime Association boardroom, 1717 East Loop North #200, Houston, TX 77029 (713–678–7655). This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Captain Richard Kaser, Executive Director of HOGANSAC, telephone (713) 671–5199, Commander Jerry Torok, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant Brandon Finley, Assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5103, e-mail *rfinley@vtshouston.uscg.mil.* Written materials and requests to make presentations should be sent to Commanding Officer, VTS Houston/Galveston, Attn: LT Finley, 9640 Clinton Drive, Floor 2, Houston, TX 77029.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Duncan) or the Committee Sponsor's representative, Executive Director (CAPT Kaser) and Chairperson (Ms. Patricia Clark).

(2) Approval of the May 25, 2005 minutes.

(3) Old Business:

(a) Dredging projects.

(b) AtoN Knockdown Working Group.

(c) Navigation Operations subcommittee report.

(d) Area Maritime Security Committee Liaison's report.

(e) Technology subcommittee report.

(f) Deepdraft Entry Facilitation Working Group.

(k) Port Coordination Team Updates.

(4) New Business.

(a) 2005–2007 Charters and New Membership Terms.

(b) Dredging Subcommittee Establishment.

(c) Restricted Visibility Working Group.

(d) Liquified Natural Gas Working Group.

(e) Bayport Container Terminal Update.

Working Groups Meeting. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: Dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, boater education issues, facilitating deep draft movements and mooring infrastructure. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting. Requests to make oral or written presentations should reach the Coast Guard 5 working days before the meeting at which the presentation will

be made. If you would like to have written materials distributed to each member of the committee in advance of the meeting, you should send your request along with fifteen copies of the materials to the Coast Guard at least 10 working days before the meeting at which the presentation will be made.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or Assistant to the Executive Secretary as soon as possible.

Dated: August 11, 2005.

R.F. Duncan,

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

[FR Doc. 05–16793 Filed 8–23–05; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 extension of information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of State and local hazard mitigation plans required under Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165.

SUPPLEMENTARY INFORMATION: This collection of information is in accordance with Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under Sec. 104 the Disaster Mitigation Act of 2000, (DMA 2000) Pub. L. 106–390. FEMA published regulations, 44 Code of Federal Regulations (CFR) part 201, that require each state, local and tribal government have in place a hazard mitigation plan in order to receive Stafford Act assistance, excluding assistance provided pursuant to emergency provisions. The plan shall include sections that describe the planning process, an assessment of the risks, a mitigation strategy, and identification of plan maintenance and updating process. The purpose of the plan requirements is to enable State, tribal and local governments to better understand the risks they face from natural hazards and to make decisions and take actions to reduce the risks from those hazards. Several revisions were published since the February 26, 2002 Interim Final Rule, including (1) to extend the date by which approved State and local mitigation plans will be required from November 1, 2003 to November 1, 2004 (October 1, 2002, 67 FR 61512), (2) to clarify the date by which local mitigation plans would be required as a condition of receiving project grant funds under the Pre-Disaster Mitigation (PDM) program (October 28, 2003, 68 FR 61368); and (3) to provide State and Indian tribal governments with a mechanism to request an extension to the date by which they must develop State Mitigation Plans as a condition of grant assistance (September 13, 2004, 69 FR 55094).

Collection of Information

Title: State/Local/Tribal Hazard Mitigations Plans—Section 322 of the Disaster Mitigation Act of 2000.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0062.

Form Numbers: None.

Abstract: This collection is in accordance with our responsibilities under 44 CFR part 201 Hazard Mitigation Planning, which requires FEMA's approval and determination of State, local and tribal eligibility for Stafford Act assistance.

Affected Public: State, local and Tribal governments.

Estimated Total Annual Burden Hours: 571,200 hours.

FEMA project/activity	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
State Mitigation Plan Updates	21	1	320	6,720
Enhanced Mitigation Plan Updates	3	1	160	480
Local Mitigation Plan Review by States	500	1	8	4,000
New Local or State Mitigation Plan Development	250	1	2,080	520,000
Local Mitigation Plan Updates	250	1	160	40,000
Total	1,024	1	2,728	571,200

Estimated Cost: The total annual estimated costs to States, territories, tribal governments and local communities for this information collection associated are $15,040,900. The costs were based on the wage rates using data from the November, 2003, U.S. Department of Labor, Bureau of Labor Statistics (BLS), Standard Occupation Classification (SOC) System for urban and regional planners (SOC Code Number 19–3051) where the mean hourly wage for urban and regional planners was $26.31 per hour. Therefore, it is estimated that $15,028,272 (571,200 hours × $26.31 per hour) in annual costs is the total cost burden for all respondents to complete this information collection.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Terry Baker for additional information. You may contact the Records Management Section for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: August 16, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–16761 Filed 8–23–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Pre-Disaster Mitigation (PDM) Grant Program eGrants.

OMB Number: 1660–0071.

Abstract: FEMA uses the PDM program eGrant application, evaluation, and award process to provide Federal grant assistance to grantees (State and federally recognized tribal government) who administer grant awards for sub-grantee applicants (State-level agencies, federally recognized indian tribal governments, local governments, public colleges and universities, tribal colleges and universities, and regional planning districts and councils of governments). Private-non-profit (PNP) organizations and private colleges and universities are not eligible sub-applicants; however, a relevant State agency or local government may apply to the grant applicant for assistance on their behalf. The grant assistance must be used to develop mitigation plans in accordance with section 322 of the Disaster Mitigation Act of 2000 to implement pre-disaster mitigation projects that reduce the risks of natural and technological hazards on life and property, and to provide information and technical assistance on cost-effective mitigation activities.

Affected Public: State, local or tribal government.

Number of Respondents: 1176.

Estimated Time per Respondent: For purposes of this information collection extension, we are estimating the burden hours to be the same (that is no increase or decrease change) as the December, 2004 OMB Approval 1660–0071. That approval included all of the required applications and grant forms for submittal either on paper or through e-Grants, regardless of the method that the Grantee chooses to use to submit the information.

GRANT APPLICATION AND REPORTING FORMS

Type of collection forms	Number of respondents	Number of responses/ respondent	Hours per response and record keeping	Annual burden hours
	(A)	(B)		(A*B*C)
SF–424 (Application face sheet)	56	2	45 minutes	84.0
Budget Information—Construction Program, FEMA Form 20–15	56	1	17.2 hours	963.2
FEMA Form 20–20—Budget—Non-Construction [1]	56	2	9.7 hours	1086.4
FEMA Form 20–16, 20–16A, 20–16B, 20–16C (Summary of assurances & certifications).	56	2	1.7 hours	190.4
SF–LLL (lobbying disclosure)	56	2	10 minutes	18.7
FEMA Form 20–10—Financial Status Report	56	8	1 hour	448.0
FEMA Form 76–10A—Obligating Document For Award/Amendment	56	2	1.2 hours	134.40
FEMA Form 20–17 Outlay Report and Request for Reimbursement	56	20	17.2 hours	19264.0
FEMA Form 20–18—Report of Government Property	56	2	4.2 hours	235.2
FEMA 20–19—Report of Unobligated Balance (or substitute)	56	2	5 minutes	9.3
Annual Audit & Audit Trail Requirements	56	1	30 hours	28.0
Subtotal for Standard Forms (SF) & FEMA forms (FF)				22,013.4

PRE-DISASTER MITIGATION GRANT PROGRAM—SUB-GRANT APPLICATIONS

Type of collection forms	Number of respondents	Number of responses/ respondent	Hours per response and record keeping	Annual burden hours
	(A)	(B)		(A*B*C)
Benefit-Cost Determination—Sub-grant Application	56	20	5 hours	5600.0
Environmental Review—Sub-grant application	56	20	7.5 hours	8400.0
Project Narrative—Sub-grant application (including PDM Evaluation Information Questions).	56	20	12 hours	13440.0
Subtotal for Grant Supplemental Information				27,440
Total Burden for PDM				50,887

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA at e-mail address *kflee@omb.eop.gov* or facsimile number (202) 395–7285. Comments must be submitted on or before September 23, 2005. In addition, interested persons may also send comments to FEMA (see contact information below).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address FEMA-*Information-Collections@dhs.gov*.

Dated: August 18, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 05–16823 Filed 8–23–05; 8:45 am]

BILLING CODE 9110–41–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Flood Mitigation Assistance (eGrants) and Grant Supplemental Information.

OMB Number: 1660–0072.

Abstract: Information sought in this collection will include all of Phase I and part of Phase II of the electronic, web-based application for Flood Mitigation Assistance (FMA) grants through FEMA's eGrant system, including all application information and the financial and program performance reports. The eGrants system is being developed to meet the intent of the eGovernment initiative, authorized by Public Law 106–107 passed on November 20, 1999.

Affected Public: State, Local or Tribal Government and Not For Profit Institutions.

Number of Respondents: 56.

Estimated Time per Respondent: The information collection for FMA through e-Grants in this OMB Approval 1660–0072 is an optional method to the FEMA Grant Administration Forms, currently approved under OMB Approval Number 1660–0025. We expect the availability of e-Grants to reduce the information collection and reporting burden of Grantees; however, since we have only utilized the e-Grants system for one complete funding cycle, we do not have sufficient data available to demonstrate or document the anticipated reduced burden. We expect further funding cycles, and increased familiarity by applicants on the use of the electronic system, to result in a reduced burden for respondents. FEMA will assess any reduction in burden hours, and consequently reduction in cost, to applicants with additional feedback from the FY2005 application cycle.

Grant Application and Reporting Forms Approved under OMB No. 1660–0025

Type of collection forms	Number of respondents	Number of responses/ respondent	Hours per response and recordkeeping	Annual burden hours
	(A)	(B)		(A*B*C)
SF–424 (Application face sheet)	56	3	45 minutes	126.0
FEMA Form 20–10—Financial Status Report, Quarterly Progress Report.	56	4	1 hour	224.0
FEMA Form 20–16, 20–16A, 20–16B, 20–16C (Summary of assurances & certifications).	56	1	1.7 hours	95.2
SF–LLL (lobbying disclosure)	56	1	10 minutes	9.3

Grant Application and Reporting Forms Approved under OMB No. 1660–0025—Continued

Type of collection forms	Number of respondents (A)	Number of responses/ respondent (B)	Hours per response and recordkeeping	Annual burden hours (A*B*C)
FEMA Form 20–18—Report of Government Property	56	1	4.2 hours	235.2
FEMA 20–19—Report of Unobligated Balance (or substitute)	56	1	5 minutes	4.7
FEMA Form 20–20—Budget—Non-Construction	56	3	9.7 hours	1629.6
FEMA Form 76–10A—Obligating Document For Award/Amendment.	56	3	1.2 hours	201.6
Annual Audit & Audit Trail Requirements	56	1	30 minutes	28.0
Total for Standard Forms (SF) & FEMA Forms				2,554
Grant Supplemental Information—Sub-Grant Applications				
Benefit-Cost Determination	56	2	5 hours	560.0
Environmental Review	56	2	7.5 hours	840.0
Project Narrative—Sub-grant Application	56	4	12 hours	2688.0
Total Burden for FMA eGrants and Supplemental Information				4,088

Estimated Total Annual Burden Hours: 4,088.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA at e-mail address *cmartin@omb.gov* or facsimile number (202) 395–7285. Comments must be submitted on or before September 23, 2005. In addition, interested persons may also send comments to FEMA (see contact information below).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Samuel Smith, Acting Chief, Records Management Branch, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: August 18, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 05–16824 Filed 8–23–05; 8:45 am]

BILLING CODE 9110–41–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Revised Recovery Plan for Hawaiian Waterbirds, Second Draft of Second Revision

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (we) announces the availability of the Draft Revised Recovery Plan for Hawaiian Waterbirds, Second Draft of Second Revision, for public review and comment.

DATES: Comments on the second draft revised recovery plan must be received on or before October 24, 2005.

ADDRESSES: Copies of the second draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (telephone: 808–792–9400). Requests for copies of the second draft revised recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Honolulu address. An electronic copy of the second draft revised recovery plan is also available at *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Eric VanderWerf, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for endangered or threatened species unless such a plan would not promote the conservation of the species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during the public comment period on each new or revised recovery plan. Substantive comments may result in changes to a recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal agency or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

This second draft revised recovery plan addresses four species of Hawaiian waterbirds: The Hawaiian duck or koloa maoli (*Anas wyvilliana*), Hawaiian coot or ‘alae ke‘oke‘o (*Fulica alai*), Hawaiian common moorhen or ‘alae ‘ula (*Gallinula chloropus sandvicensis*), and Hawaiian stilt or ae‘o (*Himantopus mexicanus knudseni*), all listed as endangered. A recovery plan for these four waterbirds was first published in 1978, and the first revision of the recovery plan was published in 1985. On July 9, 1999, we published in the **Federal Register** a notice announcing the availability for comment of a draft of the second revision to the recovery

plan (64 FR 37148). However, we never finalized that draft. The plan we are releasing at this time is the second draft of the second revised recovery plan for Hawaiian waterbirds.

Historically, these four species of waterbirds were found on all of the main Hawaiian Islands except Lana'i and Kaho'olawe. Currently, Hawaiian ducks are found on the islands of Ni'ihau, Kaua'i, O'ahu, Maui, and Hawai'i; Hawaiian coots and stilts are found on all of the main Hawaiian Islands except Kaho'olawe; and Hawaiian common moorhens are found only on the islands of Kaua'i and O'ahu. Population estimates indicate the numbers of birds fluctuate among years and that currently none of these species consistently number more than 2,000 individuals, with the exception of the Hawaiian coot, but these estimates are reliable only for the coot and the stilt.

These endangered Hawaiian waterbirds are found in a variety of wetland habitats including freshwater marshes and ponds, coastal estuaries and ponds, artificial reservoirs, taro (*Colocasia esculenta*) patches, irrigation ditches, sewage treatment ponds, and in the case of the Hawaiian duck, montane streams and swamplands. The most important cause of decline of the four species of endangered Hawaiian waterbirds is loss of wetland habitat. Other factors that have contributed to waterbird population declines, and which continue to be detrimental, include predation by introduced animals, altered hydrology, alteration of habitat by invasive nonnative plants, disease, and possibly environmental contaminants. Hunting in the late 1800's and early 1900's took a heavy toll on Hawaiian duck populations, and to a lesser extent on populations of the other three endemic waterbirds. Currently, predation by introduced animals may be the greatest threat to the coot, moorhen, and stilt, and hybridization with feral mallards is the most serious threat to the Hawaiian duck.

The recovery of the endangered waterbirds focuses on the following objectives: (1) Increasing population numbers to be consistently stable or increasing with a minimum of 2,000 birds for each species; (2) establishing multiple, self-sustaining breeding populations throughout each species' historical range; (3) establishing and protecting a network of both core and supporting wetlands that are managed as habitat suitable for waterbirds, including the maintenance of appropriate hydrological conditions and control of invasive nonnative plants; (4) for all four species, eliminating or controlling the threats posed by introduced predators, avian diseases, and contaminants; and (5) for the Hawaiian duck, removing the threat of hybridization with feral mallards. If the recovery criteria presented in the second draft revised recovery plan are met, downlisting could be initiated in 2010 and delisting in 2015.

Public Comments Solicited

We solicit written comments on the second draft revised recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: May 11, 2005.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 05–16833 Filed 8–23–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ, ES–053598, Group 22, Maine]

Survey Plat Filing; Maine

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of filing of plat of survey; Maine.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Township 1, Range 6, East of the West Line of the State.

The plat of the dependent resurvey and survey of the boundaries of the land held in trust by the United States, for the Penobscot Indian Nation, in Township 1, Range 6, West of the East Line of the State, (T. 1, R. 6, W.E.L.S.), Penobscot County, Maine, was accepted August 18, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: August 18, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–16815 Filed 8–23–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on the Preparation of a New 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2007–2012; and on the Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed 5-Year Program

SUMMARY: Section 18 of the OCS Lands Act (43 U.S.C. 1344) requires the Department of the Interior to solicit information from interested and affected parties during the preparation of a 5-year OCS oil and gas leasing program. The current 5-year program covers the period July 2002 to July 2007. The Department's MMS intends to prepare a new 5-year program for July 2007 to July 2012 to succeed the current one.

Section 18 requires completion of a lengthy, multi-step process of public consultation and analysis before the Secretary of the Interior may approve a new 5-year program. The section 18 process includes the following required steps: This initial solicitation of comments; development of a draft proposed program, a proposed program, and a proposed final program; and Secretarial approval. The MMS will also prepare an EIS that analyzes the alternatives considered for the new 5-year program. This notice announces the start of the EIS preparation process. The MMS will consider comments received in response to this notice in developing the draft proposed program and in determining the scope of the EIS. The public will have additional opportunities to comment on the draft proposed program, the draft EIS, and the proposed program.

DATES: The MMS must receive all comments and information by October 11, 2005.

Public Comment Procedure

The MMS will accept comments in one of two formats: By mail or our Internet commenting system. Please submit your comments using only one of these formats, and include full names and addresses. Comments submitted by other means may not be considered. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold his or her name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must so state prominently at the beginning of your submission.

ADDRESSES: Mail comments and information to: Ms. Renee Orr, 5-Year Program Manager, Minerals Management Service (MS–4010), Room 3120, 381 Elden Street, Herndon, Virginia 20170. Please label your comments and the packaging in which they are submitted according to the subject matter. Mark those pertaining to program preparation, ''Comments on Preparation of the 5-Year Program for 2007-2012''; and mark those pertaining to EIS preparation, ''Scoping Comments on the EIS for the 5-Year Program for 2007-2012.'' If you submit any privileged or proprietary information to be treated as confidential, please mark the envelope, ''Contains Confidential Information.''

Internet: The MMS will accept comments submitted to our electronic commenting system. This system can be accessed at *http://www.mms.gov/5-year/2007-2012main.htm*. We also will provide access to information concerning the 5-year program and EIS, including copies of comments we receive in response to this notice, at the MMS Internet Web site (*http://www.mms.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Renee Orr, 5-Year Program Manager, at (703) 787–1215.

SUPPLEMENTARY INFORMATION: The MMS requests comments from states; local and tribal governments; American Indian and Native Alaskan organizations; Federal agencies; environmental and fish and wildlife organizations; the oil and gas industry; other interested organizations; and other parties to assist in the preparation of a 5-year OCS oil and gas leasing program for 2007–2012, and applicable EIS. MMS is seeking a wide range of information, including marine productivity and environmental sensitivity. The 5-year program enables the Federal Government, states, industry, and other interested parties to plan for steps proposed to lead to OCS oil and gas lease sales. The Department will make a decision on whether to proceed with a specific lease sale on the schedule, only after meeting all of the applicable requirements of the OCS Lands Act, the National Environmental Policy Act (NEPA), and other statutes.

Section 18 of the OCS Lands Act requires that the Secretary consider national energy needs in formulating a leasing program. The following overview of today's energy situation provides the context in which to consider responses to this Request for Comments. One measure of how energy markets compare over different time periods is the relative prices that consumers can expect to pay. In the year 2000, when the Request for Comments for the current 5-Year Program (2002–2007) was issued, oil prices averaged $26.72 per barrel and natural gas prices averaged $3.68 per thousand cubic feet (mcf). Prices have generally shown an upward trend, sometimes a steep one. Between 1999 and 2000, the price of natural gas peaked temporarily for an increase of 68 percent. In 2004, those prices averaged $36.77 for a barrel of oil and $5.49 per mcf of gas, and continued to increase in the first three months of 2005, to an average of $43.21 for a barrel of oil and $5.70 per mcf of gas (Energy Information Administration, June 2005 Monthly Energy Review). The Energy Information Administration (EIA), in its Annual Energy Outlook 2005, projected that annual oil price levels will reach $52 per barrel and natural gas prices will reach $8.20 per mcf in 2025. These prices have already been exceeded. Energy prices are a reflection of supply and demand. The recent increase in oil and natural gas prices resulted from growing U.S. and global demand for these products that has not been matched by an equivalent increase in available supplies.

According to EIA's Annual Energy Outlook 2005 (reference case), over the next 20 years, U.S. demand for energy is expected to grow at an annual rate of 1.4 percent. This growth projection incorporates continued gains in energy efficiency and movement away from energy-intensive manufacturing to service industries. Despite a continuing emphasis on conservation and expanding renewable sources of energy, petroleum products and natural gas are projected to account for almost 65 percent of domestic energy consumption in 2025, a slightly larger share than today.

United States petroleum demand is expected to grow from 20 million barrels per day in 2003 to 27.9 million barrels per day in 2025. In 2003, domestic production (crude oil and natural gas plant liquids) totaled about 7.40 million barrels per day and net petroleum imports of crude oil and petroleum products amounted to 11.23 million barrels per day (or 56 percent of total supply). Today's domestic production is down slightly (to about 7.31 million barrels per day) and net imports have increased to about 58 percent of supply. An even larger share of petroleum is projected to come from overseas in future years. Although domestic production is expected to increase through the end of this decade—primarily due to deep water Gulf of Mexico production—it is expected to fall thereafter, down by almost 1 million barrels per day by the end of the forecast period. At that time, in 2025, imports are expected to account for 68 percent of petroleum demand.

While we will need to buy greater supplies of oil from other countries in the future, we will be facing greater competition for those supplies. The strongest growth in energy consumption will come from developing nations, particularly China, India and the rest of developing Asia, which are expected to experience strong economic growth and rising living standards. As a result, the nations of developing Asia will account for 40 percent of the world's growth in energy demand.

The U.S. natural gas consumption is expected to grow from 22 trillion cubic feet (tcf) in 2003 to almost 31 tcf in 2025. Domestic production, however, will grow only from 19.1 tcf to 21.8 tcf, meeting only about 30 percent of demand growth. In the past, any difference between the growth in demand and the growth in domestic production was predominantly met by imports of natural gas from Canada. However, Canada's National Energy Board has concluded that their future production will not support increased U.S. imports, but will instead be used to support Canada's energy needs. Most additional supplies will need to come from Alaskan natural gas and from imports of liquefied natural gas. EIA notes, ''A key issue for U.S. energy markets is whether the investments and regulatory approvals needed to make

those natural gas supplies available will be forthcoming, and what the ramifications will be if they are not'' (EIA, AEO 2005, p.2).

Meeting the United States' and the world's growing demand for oil and natural gas will require substantial investment in finding and developing new sources of supply. In its International Energy Outlook 2004, EIA stated that the projected growth in worldwide oil use would require an increment to global production capacity of more than 44 million barrels per day over current levels. Daniel Yergin, Chairman of Cambridge Energy Research Associates (CERA), stated that, ''[W]ith as much as a 60 percent increase in worldwide oil production needed to meet growing energy demand in the next 25 years, and an expected doubling in natural gas demand, $4 to $6 trillion in new exploration and production investment will be required'' (CERA Press Release, February 23, 2005). The OCS leasing program provides one potential avenue for such investment. Your comments will help determine the plan for leasing activities during 2007–2012, and, consequently, the ability of the OCS program to meet the Nation's energy needs in the years beyond.

OCS Planning Areas To Be Considered and Analyzed

Section 18 of the OCS Lands Act requires that the 5-year schedule of lease sales be based upon a comparative analysis of the oil and gas-bearing regions of the OCS. Purely for administrative planning purposes, MMS has created 26 planning areas, which are depicted on Figures 1 and 2. The boundaries between planning areas were administratively created and are not specified in law or regulation. Note that precise marine boundaries between the United States and nearby or adjacent nations have not been determined in all cases. The depicted maritime boundaries and limits, as well as divisions between planning areas, where shown, are for planning and administrative purposes only. These limits do not affect or prejudice in any manner the position of the United States, or its individual States, with respect to the nature or extent of internal waters or of sovereign rights or jurisdiction.

Many planning areas currently are subject to a 1998 presidential withdrawal from leasing through June 30, 2012, under the authority of Section 12 of the OCS Lands Act (43 U.S.C. 1341). The presidential withdrawal bars leasing activities. These areas include all National Marine Sanctuaries and the following planning areas: North Aleutian Basin (Bristol Bay, Alaska); Washington-Oregon; Northern, Central, and Southern California; South, Mid-, and North Atlantic; and Eastern Gulf of Mexico, except for a portion located off Alabama and another one more than 100 miles off Florida initially proposed in Lease Sale 181 in 2001.

In addition, most of those areas have been closed to leasing pursuant to congressional moratoria in annual appropriations statutes since the 1980's, and as recently as Public Law 109–54 signed into law on August 2, 2005. The first congressional moratorium was enacted in Fiscal Year (FY) 1982, prohibiting leasing in the Central and Northern California Planning Areas. The Southern California, North Atlantic, and part of the Eastern Gulf of Mexico (south of 26° N latitude) Planning Areas were first subject to moratoria in FY 1984. The North Aleutian Basin and the Mid-Atlantic Planning Areas were added in FY 1990. The Washington-Oregon Planning Area and the Florida Panhandle area of the Eastern Gulf of Mexico Planning Area were added in FY 1991. The South Atlantic Planning Area was added in FY 1992. With slight adjustments in some areas, all these areas have been subject to yearly moratoria, with the exception of the North Aleutian Basin, which has not been included since FY 2004. See Figures 3 and 4 for maps showing the areas currently subject to presidential withdrawal and/or congressional moratoria. The Administration has repeatedly stated its support for the existing moratoria, based upon deference to the wishes of the states to determine what activities take place off their coasts.

Given that the presidential withdrawals bar the conduct of lease sales in those areas for the entire 5-year planning period until 2012, and that most of the areas have been subject to congressional moratoria, a full analysis of these areas under section 18 of the OCS Lands Act may not be necessary. However, in the Energy Policy Act of 2005, Congress required the Secretary of the Interior to conduct a comprehensive inventory of oil and gas resources beneath all the waters of the OCS, taking into account considerations such as the potential for discovery of oil and gas and state laws and policies. Therefore, consistent with the purposes of both the OCS Lands Act and the recently enacted Energy Policy Act of 2005, MMS is soliciting information from governors, local officials, and other interested parties concerning all areas of the OCS.

As set forth in more detail later in this notice, the information needed is wide-ranging, including other uses of the sea, marine productivity, and environmental sensitivity. Accordingly, this notice provides an opportunity for a governor or anyone else to comment on any area of the OCS, whether to reaffirm longstanding positions or to bring other information or positions to the Secretary's attention. Such information is therefore solicited and will be considered in light of the factors specified by section 18 of the OCS Lands Act, discussed later in this notice and in light of existing moratoria. Based upon the analysis of these factors, the Secretary will decide which areas to exclude from the draft proposed program. Pursuant to section 18, excluded areas will not require any further analysis. The Secretary also seeks comments on whether the existing presidential withdrawals or Congressional moratoria should be modified or expanded to include other areas in the OCS. Finally, the Secretary has no intention of offering for leasing areas in the Eastern Gulf of Mexico Planning Area within 100 miles of the coast of the State of Florida.

Section 18

As previously noted, the program preparation process will follow all the procedural steps required by section 18 of the OCS Lands Act. This notice solicits comments early in the preparation process pursuant to section 18(c)(1) of that Act. The MMS will prepare a draft proposed program based on consideration of the comments we receive and analysis of the principles and factors specified in section 18. The draft proposed program will present for review and comment a preliminary schedule of lease sales and potential alternatives.

Section 18 of the OCS Lands Act lists the factors to be considered—the economic, social, and environmental values of all of the resources of the OCS and the potential impact of oil and gas exploration on the environment. Specific factors which must be analyzed and considered in deciding where and when to lease include: (1) Existing information on the geographical, geological, and ecological characteristics of such regions; (2) equitable sharing of developmental benefits and environmental risks among the various regions; (3) location of such regions and regional and national energy markets; (4) location with respect to other current and anticipated uses of the sea and seabed; (5) expressed industry interest; (6) laws, goals, and policies of affected states specifically identified by governors; (7) relative environmental sensitivity and marine productivity of

different areas of the OCS; and (8) environmental and predictive information for different areas of the OCS. The OCS Lands Act requires the Secretary to obtain a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impact on the coastal zone, using cost-benefit analysis.

Types of Information Requested

The MMS invites comments from anyone who would like to submit information for us to consider in determining the appropriate size, timing, and location of OCS leasing for the 5-year period July 2007 through June 2012. The types of information we seek are described below, using general and specific headings. Regardless of these headings, all respondents are welcome to comment on any aspect of program preparation and to submit any type of pertinent information.

General

The MMS would like to receive comments and suggestions of national or regional application that would be useful in formulating the new 5-year program. The types of information that would be most useful to us in conducting the analysis pursuant to section 18 of the OCS Lands Act relate to the following factors:

(1) National energy needs for the period relevant to the new program (in particular for this program, the role of OCS leasing in achieving national energy policy goals, including its potential for contributing to increased domestic natural gas supplies); the economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS; and the potential impact of oil and gas exploration on other resource values of the OCS and the marine, coastal, and human environments;

(2) Geographical, geological, and ecological characteristics of the planning areas of the OCS and near shore and coastal environments;

(3) Equitable sharing of developmental benefits and environmental risks among the various planning areas;

(4) Location of planning areas with respect to, and the relative needs of, regional and national energy markets;

(5) Other uses of the sea and seabed, including fisheries, navigation, military activities, existing or proposed sealanes, potential sites of deepwater ports (including liquefied natural gas facilities), potential offshore wind and wave energy sites, and other anticipated uses of OCS resources and locations; and any information that could be useful for future rulemaking concerning offshore alternative energy as authorized by the Energy Policy Act of 2005;

(6) Relative environmental sensitivity and marine productivity of the different planning areas and/or specific section of a given planning area of the OCS;

(7) Environmental and predictive information pertaining to offshore and coastal areas potentially affected by OCS development (including, but not limited to, socio-cultural and archaeological information); and

(8) Methods and procedures for assuring the receipt of fair market value for lands leased.

The MMS also invites commenters to respond to the following questions:

(i) What do you think is the proper role of the OCS as part of a comprehensive national energy policy? How should the 5-year program for 2007–2012 be structured to fulfill this role?

(ii) Since recent studies have projected shortfalls in meeting energy needs, particularly natural gas, how should such needs be balanced with the laws, goals, and policies influencing the management of the OCS? How should long-term planning address the current energy supply situation?

(iii) Although OCS oil and gas leasing is typically conducted through an extensive, long-established process, are there alternative ways to ensure appropriate consultation and to streamline our leasing procedures? Should the OCS Lands Act be amended to allow changes in the 5-year plan without starting the process all over again in cases of acute supply or demand shift affecting national security? How might we best meet the purpose of the OCS Lands Act ''to insure that the extent of oil and gas resources of the outer Continental Shelf is assessed at the earliest practicable time''?

(iv) If new areas are leased for exploration and potential development, what short-term and long-term impacts do you foresee for the economies of coastal communities?

(v) How should ecological considerations be weighed against national and local economic benefits, if new areas are considered for oil and gas leasing?

Specific

Inventory Provision of Energy Policy Act of 2005

Section 357 of the Energy Policy Act of 2005 directs the Secretary to ''conduct an inventory and analysis of oil and natural gas resources beneath all of the waters'' of the OCS. The statute requires that the analysis ''identify and explain how legislative, regulatory, and administrative programs and processes restrict or impede development'' of OCS resources and ''the extent that they affect domestic supply.'' Comments are solicited on how legislative, regulatory, and administrative programs or processes of the Federal Government or coastal states, as well as local zoning restrictions on onshore processing facilities and pipeline landings, restrict domestic energy production from the OCS. Further, what recommendations should be considered to ensure that domestic resource potential is adequately assessed?

The inventory and analysis must use available data on oil and gas resources including those data offshore Mexico and Canada that can aid in establishing trends of hydrocarbon accumulations in the U.S. areas of the OCS. The Energy Policy Act of 2005 also authorizes use of available technologies, except drilling, to establish a comprehensive inventory, specifically 2–D and 3–D seismic surveys. MMS seeks comments and information regarding availability of these technologies to obtain more precise resource estimates.

Gas-Only Leasing

MMS also seeks input on ways the leasing program can be designed to promote increased production of natural gas from the OCS. Natural gas has been identified as the environmentally preferred fossil fuel and currently accounts for at least 25 percent of the Nation's fuel needs. It is expected to remain a critical component of the Nation's energy demand well into the 21st century. MMS is interested in comments on the possibility of ''gas-only'' leasing, particularly in light of the dramatic rise in natural gas costs. There may be some areas very sensitive to potential accidental oil spills that may be suited to gas-only production, since natural gas would not pollute neighboring land areas in case of the loss of control of a well. It is recognized that the current law covers ''oil and gas'' leasing, and that the OCS Lands Act may need to be amended to allow leasing of the separate commodities. MMS requests any comments, but especially on the following questions:

(1) Can gas-only production be realistically anticipated?

(2) Where on the OCS should such leases be offered?

(3) What technological obstacles may exist?

(4) What steps would have to be taken if significant amounts of oil are encountered? Would the well have to be capped?

(5) What steps would have to be taken if condensate is encountered?

(6) How would gas-only production affect the OCS Lands Act requirement for ''prevention of waste and conservation of the natural resources''?

Alaska Specific

In several areas offshore Alaska, the current program includes a ''special'' sales process to provide the Secretary flexibility to offer such areas if the interest is sufficient. Should the ''special'' lease sale process used in the current 5-year program be continued or amended to reflect regional needs?

Restricted Joint Bidders

It has been suggested that the inability of the larger oil and gas companies to submit joint bids may be an important factor in the low interest in some Alaska OCS lease sales, given the lack of infrastructure and the cost and risk of operating in frontier areas. Should MMS consider dropping the current joint bidding restrictions for such companies in certain areas of the Alaska offshore? If so, where and why?

Affected Coastal States

As specified in section 18(a)(2)(F) of the OCS Lands Act, the MMS requests the governors of affected states to identify state laws, goals, and policies relevant to OCS oil and gas. A letter soliciting such information has been sent to those governors. Pursuant to section 18(f)(5) of the OCS Lands Act and implementing regulations at 30 CFR 256.20, MMS requests information concerning the relationship between OCS oil and gas activity and the states' coastal zone management programs that are being developed or administered under the Coastal Zone Management Act. We also request the affected states to submit information concerning environmental risk and potential for damage to coastal and marine resources associated with development of the OCS, information related to other uses of the sea, and any information that is relevant to equitable sharing of developmental benefits and environmental risks associated with OCS oil and gas activity.

Oil and Gas Industry

As specified in section 18(a)(2)(E) of the OCS Lands Act, the MMS requests oil and gas industry respondents to provide information indicating interest in the opportunity to lease and develop additional OCS oil and gas resources. Respondents should base this information on their expectations as of 2007. For each area in which a company is interested, please submit information concerning unleased hydrocarbon potential, future oil and gas price expectations, and other relevant information that the company uses in making OCS oil and gas leasing decisions. The MMS requests industry respondents to provide additional information as specified below. On request such information will be treated confidentially, as explained further below:

(1) Indicate the OCS planning area(s) where the company would be interested in acquiring oil and gas leases during the period 2007–2012. If more than one planning area is of interest, rank the areas in order of preference.

(2) Indicate the number and timing of lease sales in the period 2007–2012 that would be appropriate for each planning area. If only one lease sale in a planning area is appropriate, indicate whether that area should be considered for leasing early or late in the 5-year program schedule. If more than one lease sale in a planning area is suggested, indicate the preferred interval between lease sales.

Section 18(g) of the OCS Lands Act authorizes confidential treatment of privileged or proprietary information. In order to protect the confidentiality of privileged or proprietary information, include such information as an attachment to other comments submitted so that there is no ambiguity about what portions of the comments are confidential or proprietary. On request, the MMS will treat the privileged or proprietary information that is attached to a response as confidential from the time of its receipt until 5 years after approval of the 2007–2012 leasing program, subject to the standards of the Freedom of Information Act. However, the MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, or comments not containing such information. As noted above, there should be affixed the label ''Contains Confidential Information'' on any envelope containing privileged or proprietary information that a respondent wishes to be treated as confidential.

Department of Commerce

Pursuant to section 18(f)(5) of the OCS Lands Act and implementing regulations at 30 CFR 256.20, the MMS requests information concerning relationships between affected states' coastal zone management programs and OCS oil and gas activities. We have sent a letter to the Secretary of Commerce soliciting such information.

Department of Energy

Pursuant to implementing regulations at 30 CFR 256.16, the MMS requests information concerning regional and national energy markets, OCS production goals, and oil and gas transportation networks. We have sent a letter to the Secretary of Energy soliciting such information.

EIS Preparation

Pursuant to section 102(2)(C) of NEPA, the MMS intends to prepare an EIS for the new 5-year OCS oil and gas leasing program for 2007–2012. This notice starts the scoping process for the EIS under 40 CFR 1501.7, and solicits information regarding issues and alternatives that should be evaluated in the EIS. The EIS will address the potential impacts of the adoption of the proposed 5-year program. The MMS requests respondents to focus their comments on the significant environmental issues attendant to OCS oil and gas leasing and development and on alternative options for the size, timing, and location of lease sales that should be evaluated in the EIS. Please label and submit comments as indicated above. The MMS will consider these comments for the purposes of determining the scope of the EIS we plan to prepare and the schedule for scoping. For further information about preparation of the EIS, please contact Mr. Jim Bennett, Chief, Branch of Environmental Assessment at the Minerals Management Service, 381 Elden Street, MS 4042, Herndon, Virginia 20170, telephone (703) 787–1660.

Cooperating Agency

The Department of the Interior invites other Federal agencies and state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the EIS. We invite qualified government entities to inquire about cooperating agency status for the EIS for the proposed 5-year program. Per guidelines from the Council of Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and to remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision making authority of any other agency involved in the NEPA process. Upon request, MMS will provide potential cooperating agencies with a written summary of ground rules for

cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of pre-decisional information. MMS anticipates this summary will form the basis for a Memorandum of Understanding between the MMS and each cooperating agency. Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. A copy of this document is available at: *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

The MMS, as the lead agency, will not be providing financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process. MMS will also consult with tribal governments on a government-to-government basis. If further information about cooperating agencies is needed, please contact Mr. Jim Bennett, at (703) 787–1660.

Dated: August 22, 2005.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

BILLING CODE 4310–MR–P

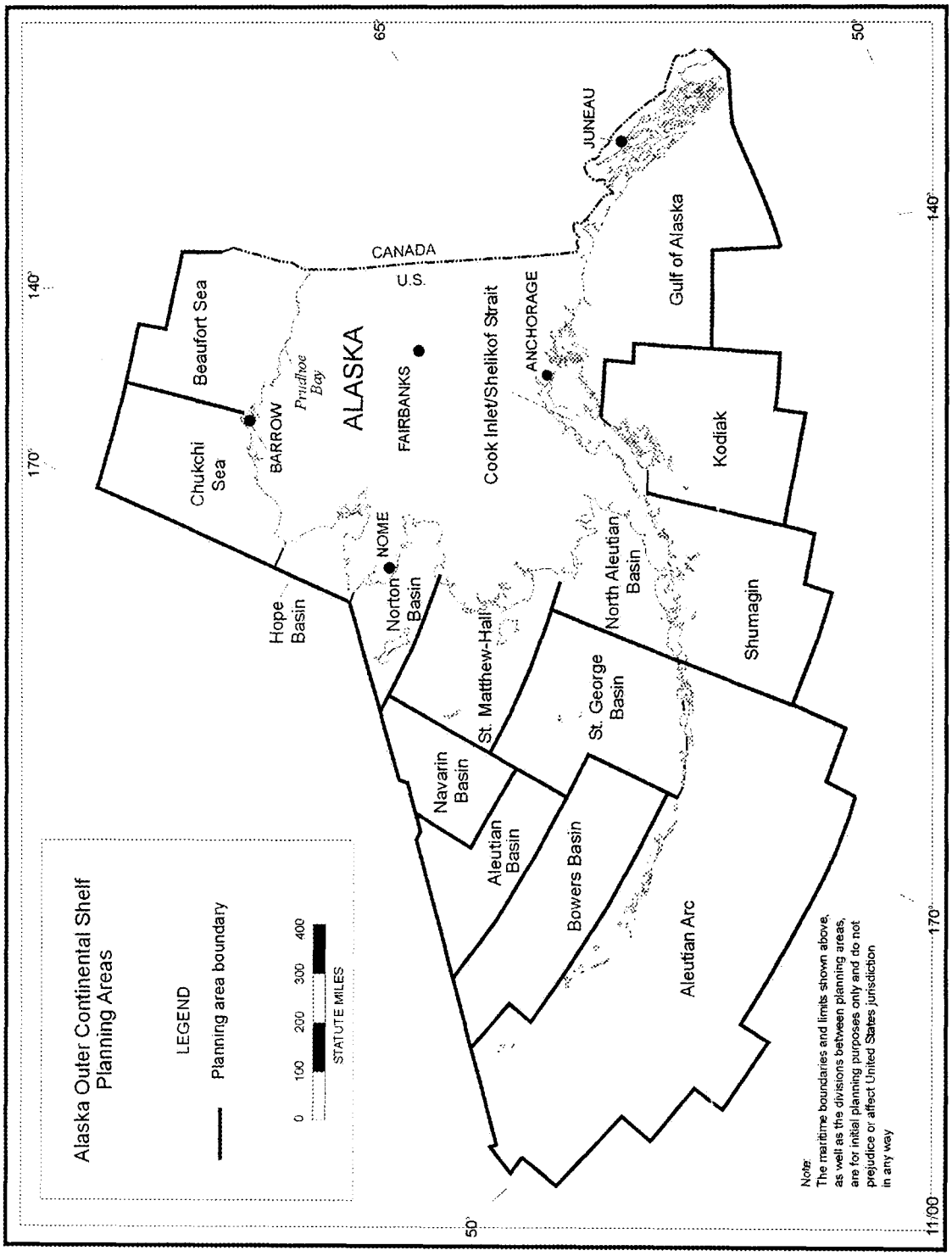

Figure 1. Alaska

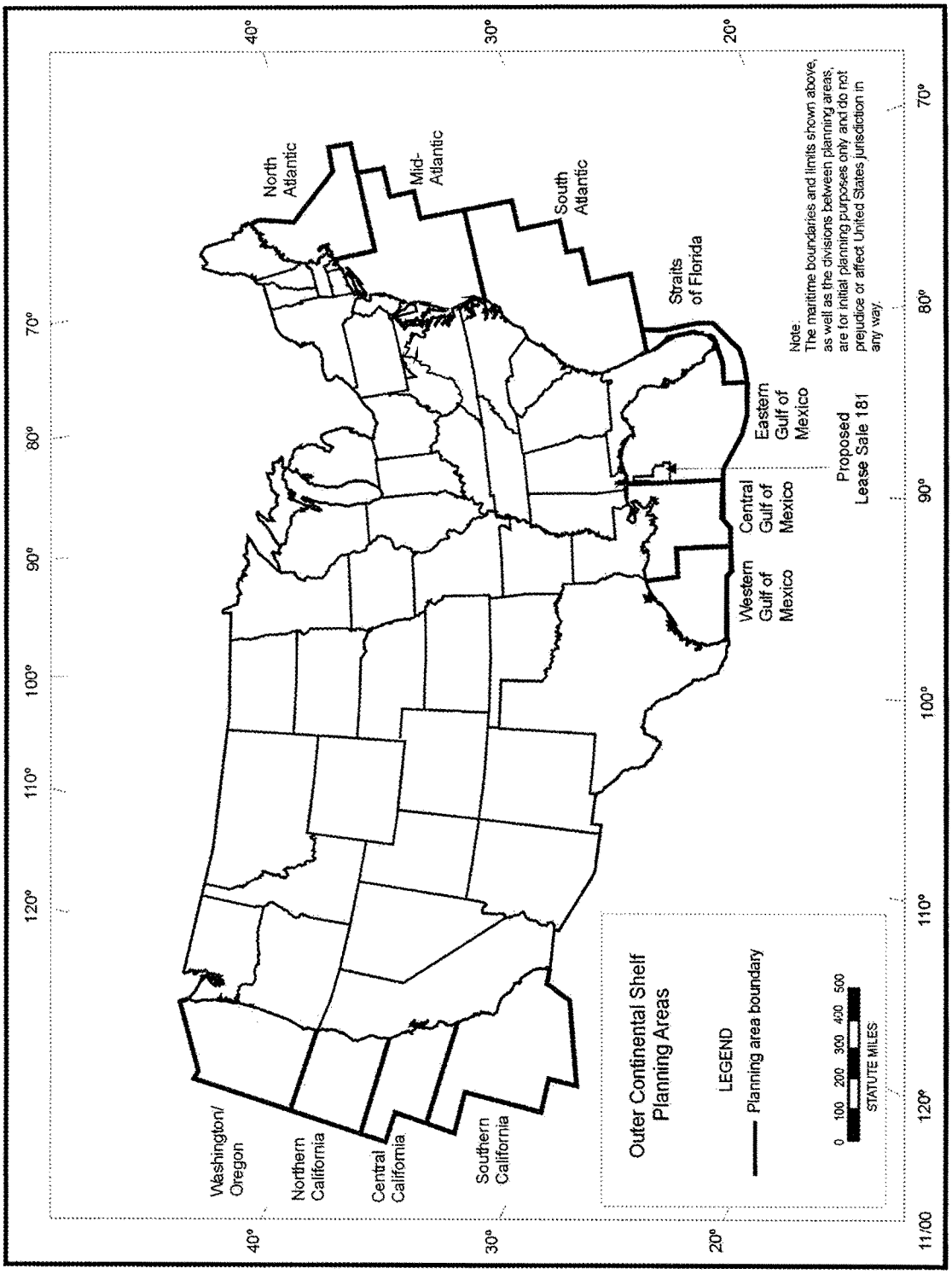

Figure 2. Lower 48 States

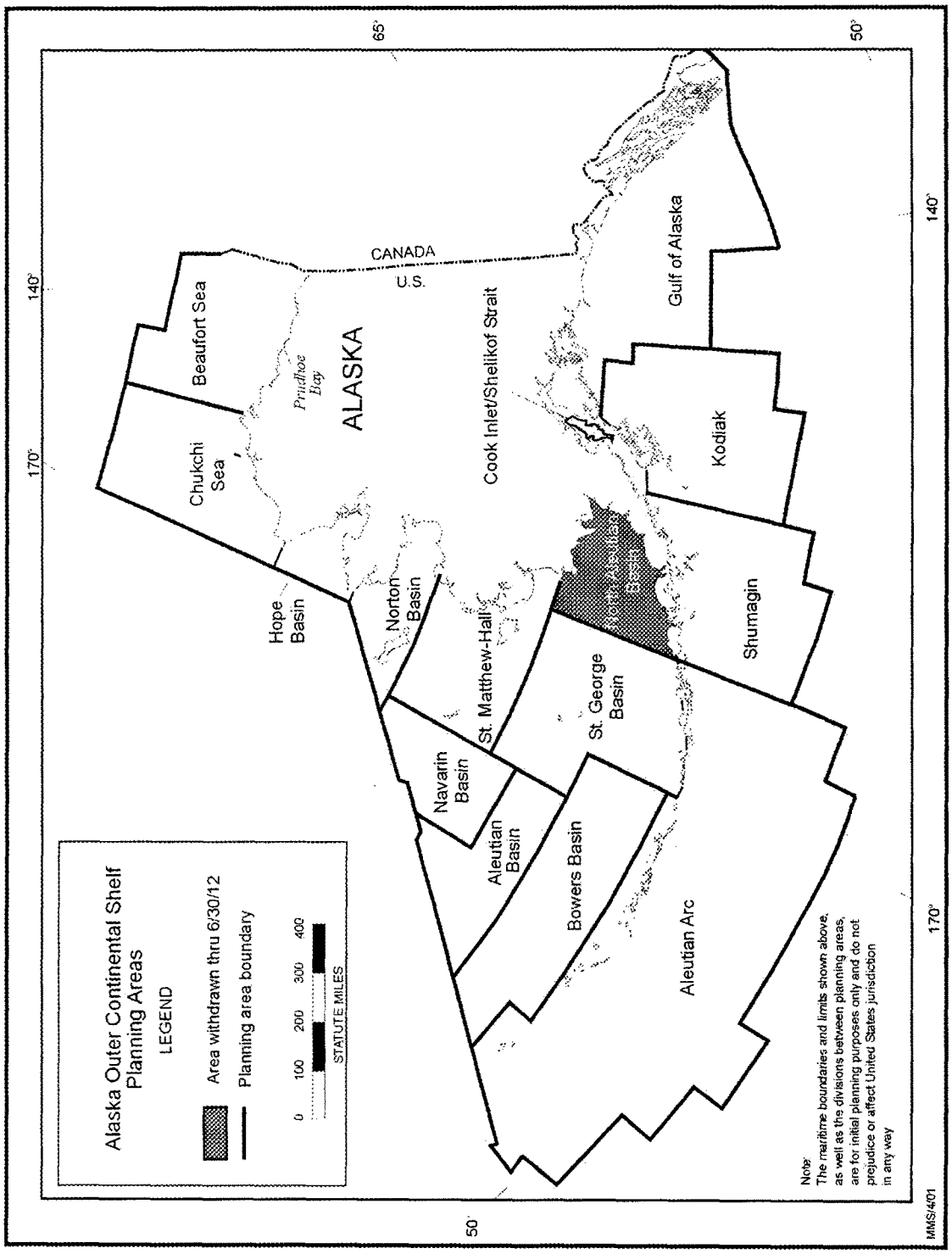

Figure 3. Alaska -- Area Under Presidential Withdrawal

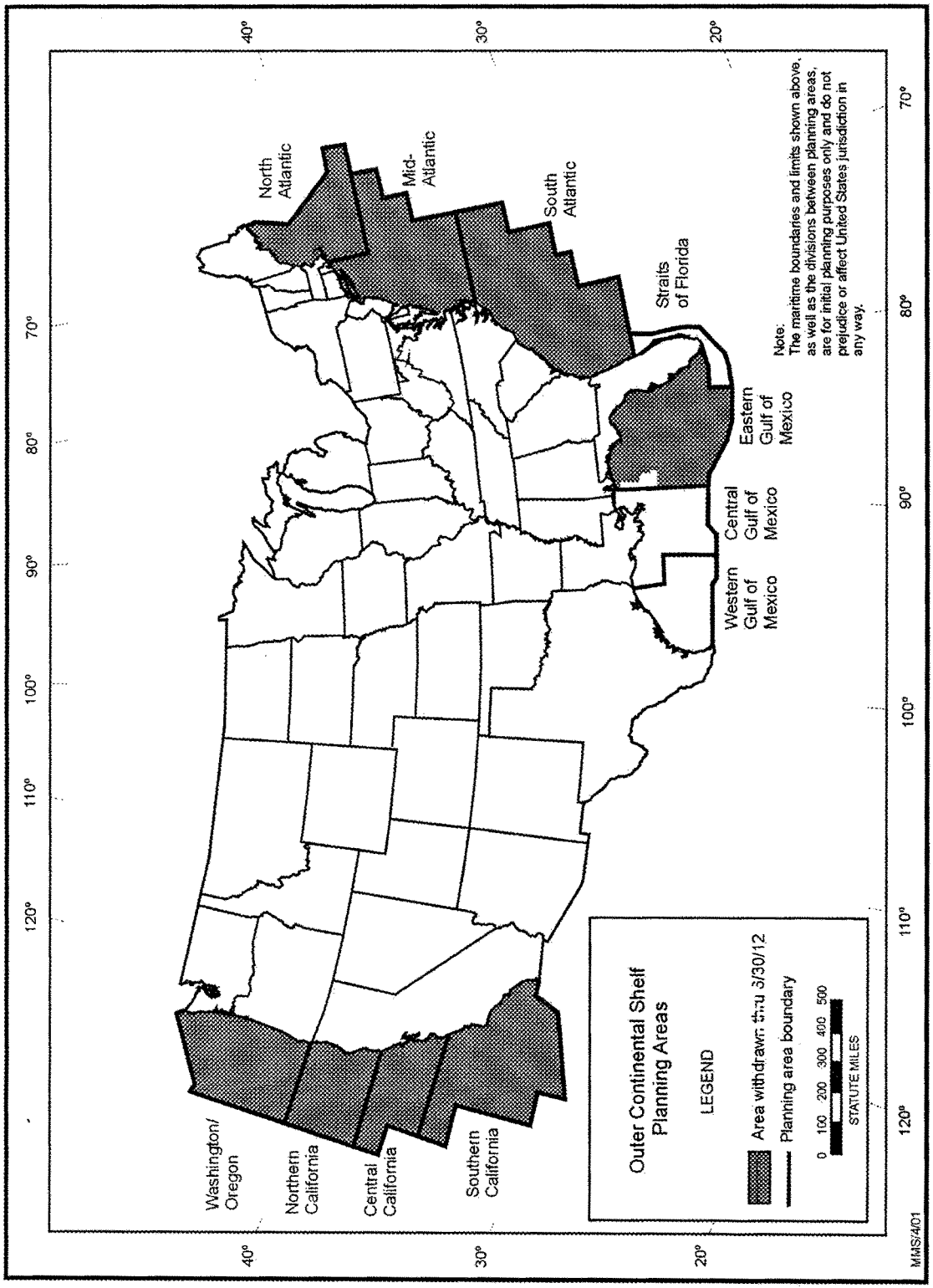

Figure 4. Lower 48 States -- Areas Under Presidential Withdrawal

[FR Doc. 05–16905 Filed 8–22–05; 12:07 pm]
BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). **Note:** For the purpose of this announcement, Water Management Plans are considered the same as Water Conservation Plans (Plans). The CVPIA requires Reclamation to evaluate, and revise if necessary, the Criteria every 3 years. Reclamation is publishing this notice to allow the public to comment on the revised 2005 draft Criteria. Public comment on the revised Criteria is invited at this time. The draft revision is available for review and comment. A copy of the draft revision can be found at the following Web site: *http://www.usbr.gov/mp/watershare/documents/2005DraftCriteria.pdf.*

A copy of the draft revision can be obtained by contacting persons at the address below. After the review period, if no significant changes are made based on comments from the public, the Criteria will be final. After the Criteria is final, it will be used to evaluate Plans.

DATES: All public comments must be received by September 30, 2005.

ADDRESSES: Please mail comments to Jerry Townsend, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5223 (TDD 978–5608), or e-mail at *gtownsend@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Leslie Barbre or Jerry Townsend at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on the revision of the Criteria. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the ''Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop Criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those Plans required by Section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these Criteria must be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' The Criteria have the following applicability statements:

Who Must Use These Criteria. These Criteria apply to Plans submitted to Reclamation as required by applicable Central Valley Project water delivery contract or any contract that specifically invokes these Criteria.

Exceptions. The following are excepted from the requirement to prepare a Plan using these Criteria:

- All Contractors that receive only irrigation water from any Federal Reclamation project, and deliver said water to less than 2,000 acres of land.
- All Contractors that receive only municipal and industrial (urban) water from any Federal Reclamation project, and provide said water to less than 3,300 people.
- All Contractors that receive a combination of irrigation and urban water amounting to less than an annual average of 2,000 acre-feet from any Federal Reclamation project.

Reclamation will evaluate Plans based on these Criteria. The CVPIA requires Reclamation to evaluate, and revise if necessary, the Criteria every 3 years. The Criteria were previously revised in 1996, 1999, and 2002.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. For copies contact Leslie Barbre, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5232 (TDD 978–5608), or e-mail at *lbarbre@mp.usbr.gov.*

Dated: July 25, 2005.

Donna E. Tegelman,

Regional Resources Manager.

[FR Doc. 05–16818 Filed 8–23–05; 8:45 am]
BILLING CODE 4210–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

San Luis Drainage Feature Re-evaluation Draft Environmental Impact Statement, Alameda, Contra Costa, Fresno, Kern, Kings, Merced, San Joaquin, San Luis Obispo, and Stanislaus Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Extension of public review and comment period for the Draft Environmental Impact Statement (EIS).

SUMMARY: The Bureau of Reclamation is extending the public review and comment period for the Draft EIS to Thursday, September 1, 2005. The notice of availability of the Draft EIS and notice of public hearings was published in the **Federal Register** on June 2, 2005, (70 FR 32370). The public review period was originally scheduled to end on August 1, 2005.

DATES: Submit comments on the Draft EIS by close of business Thursday, September 1, 2005.

ADDRESSES: Send comments on the Draft EIS to Ms. Claire Jacquemin, Bureau of Reclamation, 2800 Cottage Way, MP–700, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Robbins, Project Manager, at 916–978–5061, TDD 916–978–5608. The Draft EIS is also available online at *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=61.* To request a copy of the Draft EIS please contact Ms. Jacquemin at 916–978–5119.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves

as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 29, 2005.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 05–16821 Filed 8–23–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Announcement to Extend Comment Period on the Preparation of an Environmental Impact Statement on Excess Spoil Generation and Disposal and Stream Buffer Zone Rulemaking

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are allowing additional time for the public to submit suggestions on significant issues and specific alternatives that we should consider in the planning and preparation on an environmental impact statement on the excess spoil generation and disposal and stream buffer zone rulemaking. We received multiple requests to extend the comment period by a week beyond the last public scoping meeting in order for the meeting participants to fully consider discussions within the meeting. We believe that this is reasonable request and are granting an extension of public comment period.

DATES: *Electronic or written comments:* We must receive your written comments by 4 p.m. eastern standard time on September 1, 2005, to ensure consideration in the preparation of the draft EIS.

ADDRESSES: You may mail or hand carry comments to: ''EIS Scoping SBZ Rulemaking Comments'' c/o OSM Appalachian Region, 3 Parkway Center, Pittsburgh, Pennsylvania 15220, or you may send comments via electronic mail to: *SBZ-EIS@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: David G. Hartos, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220; Telephone: 412–937–2909. E-mail address: *DHARTOS@OSMRE.GOV*.

SUPPLEMENTARY INFORMATION: On June 16, 2005 (70 FR 35112), we published a notice of our intent to prepare an environmental impact statement (EIS) to analyze the effects of possibly revising our regulations pertaining to excess spoil generation and disposal, and stream buffer zones. We determined that the preparation of an EIS would be an appropriate mechanism to fully access alternative approaches and potential impacts of the changes proposed in the **Federal Register** on January 7, 2004 (69 FR 1036). We asked for the public's assistance in identifying significant issues and specific alternatives related to the proposed action. The original comment period was scheduled to close on August 15, 2005, but we are extending the comment period to the time and date list under **DATES**.

Dated: August 16, 2005.

Michael K. Robinson,

Acting Regional Director, Appalachian Region, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 05–16802 Filed 8–23–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–846–850 (Review)]

Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Czech Republic, Japan, Mexico, Romania, and South Africa

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from Czech Republic, Japan, Mexico, Romania, and South Africa.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from Czech Republic, Japan, Mexico, Romania, and South Africa would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: August 5, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On August 5, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.[1] The Commission found that the domestic interested party group response to its notice of institution (70 FR 22688, May 2, 2005) was adequate, and that the respondent interested party group responses with respect to the Czech Republic, Mexico, Romania, and South Africa were adequate, but found that the respondent interested party group response with respect to Japan was inadequate. However, the Commission determined to conduct a full review concerning subject imports from Japan to promote administrative efficiency in light of its decision to conduct full reviews with respect to subject imports from the Czech Republic, Mexico, Romania, and South Africa. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 18, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16836 Filed 8–23–05; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Marcia E. Miller did not participate in these determinations.

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed collection of information on the Reemployment and Eligibility Assessment (REA) program. ETA is seeking Office of Management and Budget (OMB) approval under the PRA95 to establish a system to collect data at the state level on REA workload counts and outcomes.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 24, 2005.

ADDRESSES: Diane Wood, U.S. Department of Labor, Employment and Training Administration, Room S4231, 200 Constitution Avenue NW., Washington, DC 20210, Fax (202) 693–3975; e-mail: *wood.diane@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Diane Wood, telephone: (202) 693–3212 (this is not a toll-free number); Fax (202) 693–3975, e-mail: *wood.diane@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Funds were awarded to 21 states in FY 2005 to implement REA initiatives. The REA guidelines require that these funds be used to conduct in-person assessments in the One-Stop Career Centers. The REA must include a UI continued eligibility review, the provision of labor market information, development of a work-search plan and referral to reemployment services and/or training, as appropriate. The guidelines require that participation exclude those claimants who have a specific return-to-work date or who secure employment solely through a union hiring hall.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Assess whether the proposed collection of information is necessary for evaluation of the REA program, including whether the information will have practical utility;
- Evaluate the accuracy of ETA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

ETA proposes to require state workforce agencies (SWAs) that implement REA initiatives to report quarterly data for REA grants beginning in FY 2006. This will provide the only continuous source of information about the effectiveness of REAs and is necessary to monitor the program. SWAs submitting proposals for FY 2006 funding will be advised of the reporting requirements and report formats prior to the development of their proposal.

The Department proposes collecting the following data elements for Reemployment and Eligibility Assessments (REAs). The quarterly activity report will be due at the end of each quarter and will reflect the REAs scheduled during the report quarter.

The ETA 9060—Reemployment and Eligibility Assessments Workloads report includes the following 23 elements.

1. Number of claimants scheduled for their first REA—The sum of all claimants who were scheduled for their first REA of their current benefit year during the report quarter.

2. Number of REAs scheduled—This includes all REAs for which an official notice was sent to the claimant instructing them to report to the One-Stop Career Center. It includes both those scheduled REAs for which the claimant reported as directed and those scheduled REAs for which the claimant failed to report. It does not include those REAs which the claimant cancelled in advance and which were rescheduled with no disqualification.

3. Number of REAs completed—This number includes all completed REAs to which the claimant reported as directed. It includes REAs that were conducted for claimants who were rescheduled for an REA after missing an appointment.

4. Number of claimants reporting to reemployment services or training. For each REA, claimants should be reported in only one service category in items number 5, 6, and 7 below, based on the highest level of services received with core services as the lowest level and training as the highest. Core services, intensive services and training are defined in accordance with state definitions consistent with the Wagner-Peyser Act, the Workforce Investment Act or other applicable legislation.

5. Number of claimants reporting to core reemployment services as a result of an REA.

6. Number of claimants reporting to intensive reemployment services as a result of an REA.

7. Number of claimants reporting to training as a result of an REA.

8. Number of completed REAs resulting in a disualification or established overpayments. This number includes all claimants for whom a nonmonetary determination has been issued holding them ineligible under any provision of state law. Claimants may be reported in more than one of the following categories:

9. Number of completed REAs resulting in a disqualification for a separation issue.

10. Number of completed REAs resulting in a disqualification for an able and available issue.

11. Number of completed REAs resulting in a disqualification for a disqualifying or deductible issue.

12. Number of completed REAs resulting in a disqualification for a refusal of suitable work issue.

13. Number of completed REAs resulting in a disqualification for an issue not covered in categories #9–12.

14. Number of completed REAs resulting in a establishment of an overpayment.

15. Dollar amount of overpayments established in item #14.

16. Number of REAs for which the claimant failed to report.

This number includes those claimants who were sent an official notice to report for an REA, and who did not report as directed. It includes claimants who failed to report and who were subsequently rescheduled for an REA at a different time. It does not include

REAs that were cancelled in advance by the claimant and for which no disqualification was issued.

17. Number of REAs for which the claimant failed to report (reported in #16) and which were rescheduled without disqualification.

18. Number of REAs for which the claimant failed to report (reported in #16) which resulted in the claimant being disqualified for failure to meet a reporting requirement.

19. Number of REAs for which the claimant failed to report (reported in #16) which resulted in the claimant being disqualified for an issue other than failure to meet a reporting requirement.

20. Number of overpayments established as a result of failure to report (reported in #16).

21. Dollar amount of overpayments established as a result of failure to report (reported in #20).

22. Number of REAs for which the claimant failed to report (reported in #16) which did not result in either a rescheduling or a disqualification because the claimant stopped claiming UI.

23. Number of claimants reported in #22 who were identified as having returned to work (if available).

The ETA 9061—Reemployment and Eligibility Assessments Outcomes report includes the following 16 elements. It will be submitted for the following two groups of claimants who filed a claim and established a UI benefit year in the report quarter. The outcome report would be due in the fifth quarter following the report quarter, after the benefit year has ended. As part of a state's submission for an REA grant, a description of how the state will select a comparison group, group 1 below, will be required and scored.

1. Claimants in a state-defined comparison group. This group should consist of the universe of claimants who were in the target group from which REA participants could have been selected for an REA but were not selected. The claimants in this group should have characteristics as similar as possible to the selected REA participant group. The following data elements will be collected:

a. Number of claimants who filed a claim and established a UI benefit year in the report quarter.

b. Total weeks compensated. This number is the total weeks of benefits paid for those claimants reports in item a. above during their respective benefit years. This number includes weeks of partial payments.

c. Total benefits paid. This number is the total dollar amount of benefits paid to those claimants reported in item a. above during their respective benefit years. This number includes weeks of partial payments.

d. Number of disqualifications for claimants in the group. This may include multiple disqualifications for individuals.

e. The number of claimants exhausting benefits.

f. Number of claimants reemployed within the benefit year, based of the National or State Directories of New Hires.

g. For those reemployed, average time from date of initial claim to date of reemployment.

h. The amount of overpayments established.

2. Claimants who were scheduled for at least one REA during the benefit year.

a. Number of claimants who filed a claim and established a UI benefit year in the report quarter.

b. Total weeks compensated. This number is the total weeks of benefits paid for those claimants reported in item a. above during their respective benefit years. This number includes weeks of partial payments.

c. Total benefits paid. This number is the total dollar amount of benefits paid to those claimants reported in item a. above during their respective benefit years. This number includes weeks of partial payments.

d. Number of disqualifications for claimants in the group. This may include multiple disqualifications for individuals.

e. The number of claimants exhausting benefits.

f. Number of claimants reemployed within the benefit year, based on the National or State Directories of New Hires.

g. For those reemployed, average time from date of initial claim to date of reemployment.

h. The amount of overpayments established.

Due Dates for REA Reports

Reporting of the ETA 9060 will begin one year prior to the ETA 9061. States will electronically transmit the reports to ETA according to the following schedule. All workload counts are due on the 20th day of the second month following the end of the calendar quarter to coincide with other ETA reporting requirements. Outcomes reports are due on the same calendar quarter schedule in the following year.

ETA 9060—REEMPLOYMENT AND ELIGIBILITY ASSESSMENT WORKLOAD

Quarter in which the REA is scheduled	Report due to ETA by
1st quarter (January to March).	May 20.
2nd quarter (April to June).	August 20.
3rd quarter (July to September).	November 20.
4th quarter (October to December).	February 20.

ETA 9061—REEMPLOYMENT AND ELIGIBILITY ASSESSMENT OUTCOMES

Quarter in which the benefit years begin	Report due to ETA by
1st quarter (January to March).	May 20.
2nd quarter (April to June).	August 20.
3rd quarter (July to September).	November 20.
4th quarter (October to December).	February 20.

ETA will provide resources to the states for startup and operational costs for the first year of data collection as described in the burden cost sections below.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Reemployment and Eligibility Assessments.

Agency Number: ETA 9060—Reemployment and Eligibility Assessments Workload and ETA 9061—Reemployment and Eligibility Assessments outcomes.

Record Keeping: States are required to follow their state laws regarding public records retention for this proposed data collection system.

Affected Public: State Workforce Agencies (SWAs).

Total Respondents: 53 state agencies.

Frequency: Quarterly.

Total Responses: 424.

Average Time per Responses: SWA staff .5 hours.

Estimated Total Burden Hours: 2,120 hours.

Total Burden Cost (capital/startup): $371,000 53 SWAs at $7,000 each.

Total Burden Cost (operating/maintaining): $79,000 (annual) 53 SWAs at $1,500 per SWA.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 17, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–16906 Filed 8–23–05; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of Establishment

The Archivist of the United States has determined that the establishment of the Advisory Committee on Electronic Records Archives is necessary and is in the public interest in connection with the President's Management Agenda's e-government initiatives. This committee will comply with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

This Committee shall advise the Archivist of the United States on technical, mission, and service issues related to the Electronic Records Archives (ERA). It will advise and make recommendations to the Archivist on issues related to the development, implementation, and use of the ERA system.

The Committee will be composed of not more that 20 voting members considered having particular expertise, knowledge and experience in electronic records. Members will be appointed by the Archivist of the United States.

Unless renewed by appropriate action prior to its expiration, the Charter for the Advisory Committee on the Electronic Records Archives will expire two years from the date of establishment.

Dated: August 17, 2005.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 05–16786 Filed 8–23–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Current Characteristics of Sample Public Library Summer Reading Programs

AGENCY: Institute of Museum and Library Services.

ACTION: Notice, request for comments, submission for emergency OMB approval.

SUMMARY: The Institute of Museum and Library Services, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and federal agencies to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508 (2)(A)]. This pre-clearance comment opportunity helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements or respondents can be properly assessed. The Institute of Museum and Library Services is currently soliciting comments concerning its planned collection of data to support discussion of current public library evaluation practices for summer reading programs.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 19, 2005.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Send comments to: Karen Motylewski, Evaluation Officer, Institute of Museum and Library Services, 1800 Massachusetts Avenue, NW., 9th floor, Washington, DC 20036–5841. Ms. Motylewski can be reached on telephone: 202–653–4686; Fax: 202–653–4625; or by e-mail at *kmotylewski@imls.gov*.

SUPPLEMENTARY INFORMATION

Background: The Institute of Museum and Library Services is charged with strengthening library services for the benefit of the public. Under the authority of the Library Services and Technology Act IMLS provides formula-based funds to each of the 50 state library administrative agencies (SLAAs). Public library summer reading programs are common to all SLAAs and most of the nation's approximately 9,100 local libraries. These programs are important resources for education in the United States and promote the vision of a society in which learning is seen as a community-wide responsibility supported by both formal and informal educational entities. While there is strong conviction in the library field that public library summer programs foster reading skills, public libraries collect little evaluative data.

Under its convening authority IMLS will bring together 33 state and public library professionals on September 8–9 to explore current evaluation practice for public library summer reading programs and to identify a small number of common proxy measures for the outcomes of library summer reading programs. These measures will be piloted in a Web-based data collection and management resource for libraries in summer 2006.

II. Current Actions

Agency: Institute of Museum and Library Services.

Title: Current Characteristics of Sample Public Library Summer Reading Programs

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: State Library Administrative Agencies and Public Libraries.

Number of Respondents: 33.

Estimate Time Per Respondent: 10 minutes.

Total Burden Hours: 5.5.

Total Annualized capital/startup costs: 0.

Total Annual costs: $1500.00.

Contact: Send comments to Karen Motylewski, Evaluation Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5841. Ms. Motylewski can be reached on telephone: 202–653–4686; Fax: 202–653–4625; or by e-mail at *kmotylewski@imls.gov*.

Dated: August 19, 2005.

Barbara G. Smith,

E-Projects Officer, Office of Research and Technology, Authorized Liaison Officer to the Federal Register on behalf of the Institute of Museum and Library Services.

[FR Doc. 05–16837 Filed 8–23–05; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Submission for OMB Review: Comment Request

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling Susan G. Daisey, Director, Office of Grant Management, the National Endowment for the Humanities (202–606–8494) or may be requested by e-mail to *sdaisey@neh.gov*. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which:

(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, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: National Endowment for the Humanities.

Title of Proposal: General Clearance Authority to Develop Evaluation Instruments for the National Endowment for the Humanities.

OMB Number: N/A.

Affected Public: NEH grantees.

Total Respondents: 750.

Frequency of Collection: On occasion.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 375 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The NEH is seeking a general clearance authority to develop evaluation instruments for its grant programs. These evaluation instruments will be used to collect information from NEH grantees from one to three years after the grantee has submitted the final performance report.

FOR FURTHER INFORMATION CONTACT: Ms. Susan G. Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by e-mail to: *sdaisey@neh.gov*. Telephone: 202–606–8494.

Carole M. Watson,

Assistant Chairman.

[FR Doc. 05–16864 Filed 8–23–05; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by October 24, 2005, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpton@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpton@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the National Science Foundation's Math and Science Partnership (MSP) Program.

OMB Control No.: 3145–New.

Expiration Date of Approval: Not applicable.

Abstract: The National Science Foundation (NSF) requests a three-year clearance for an evaluation of the Math and Science Partnership (MSP) program. After three years in existence, MSP as a program in its entirety has not been evaluated regarding whether it is achieving its goals or purposes. The MSP program is a research and development (R&D) effort funded by the NSF to integrate the work of higher education, especially disciplinary faculty in math, sciences, and engineering, with that of K–12 communities in order to strengthen and reform math and science education. The program is authorized under the NSF Authorization Act of 2002 (P.L. 107–368), December 19, 2002 (to authorize appropriations for FY 2003–07 and ''for other purposes''). MSP is among 11 programs specifically authorized by the legislation (Sec. 11 authorizes a 12th program, the Centers for Research on Mathematics and Science Learning and Education Improvement).

The NSF's MSP program portfolio consists of about 80 awards or projects (*e.g.* design grants, standard or continuing grants or cooperative agreements) that initially were funded between 2002 and 2004. The type of awards subject to study and data collection, however, include only the comprehensive MSPs, targeted MSPs, teacher institute partnerships, and

Research, Evaluation, and Technical Assistance (RETAs), or a universe of approximately 65 discrete projects.

The evaluation's data collection and analysis activities will be conducted by COSMOS Corporation, Bethesda in partnership with Brown University, George Mason University, and The McKenzie Group via a contract administered by the NSF's Division of Research, Evaluation and Communication (REC). This evaluation involves both quantitative and qualitative data, collected from multiple sources using multiple methods, including secondary analyses of project-related materials such as existing databases (MSP Management Information System—OMB 3145–0199), annual reports, Web sites, and relevant policy and methodological documents and original data collection through one-on-one interviews with key stakeholders conducted during site visits. For the MSP Management Information System, the contract team will analyze these data using quantitative statistical models. A second data source consists of annual project reports and other reports submitted by the MSP grantees to the NSF in accordance with Federal research project reporting requirements established at NSF under OMB 3145–0058. A third source is U.S. Department of Education's public use files on student achievement and school systems' demographic characteristics.

The fourth source for data is the proposed evaluation's original data collection activities. In particular and principally a series of site visits will be conducted during 2006, 2007, and 2008. The evaluation plan selects a random sample of sites to be the subject of the 2006 and 2007 site visits. In this manner, data and lessons derived form the earlier site visits can be the basis for generalizing to the entire MSP Program portfolio during 2006 and 2007. By 2008, with the entire census of study projects covered, such a sampling logic will no longer be relevant. The initial random sample will be stratified so that every grant site visit occurs before the grant expires.

The evaluation's overall framework consists of several substudies each focusing on a different, but essential part of the MSP grantee's work (e.g., partnerships, the role of disciplinary faculty, student achievement). The relevant evaluation design under these conditions might be considered a meta-analytic rather than singular design—e.g., providing a rationale for the selection of substudies as well as some guidance for conducting the substudies. Consultations have occurred with a team of external experts on the research design during the evaluation's design phase and will continue to take place throughout the evaluation. The team of external experts represents the nation's leading researchers and scholars on methodology and content in the field of evaluation and representatives are from top-tier university schools of education and departments of mathematics or science; an education advocacy group; and an education research council.

The data collection instruments include face-to-face interviews, such as focus groups, and telephone or electronic surveys. An interview protocol based on the evaluation framework will be administered during the site visits. Expected respondents at site visits are Principal Investigators, co-Principal Investigators, administrators, teams of external experts, and other stakeholders who participated in MSP. There are not costs to respondents other than the time involved in the interview or survey process.

Information from the evaluation's data collections and analysis will be used to improve the NSF's program processes and outcomes. It will enable NSF to prepare and publish reports, and to respond to requests from Committees of Visitors, Congress, and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Effectiveness Rating Tool (PART).

The primary evaluation questions include but are not limited to:

(1) How has the MSP Program affected or influenced the expertise, numbers, and diversity of the mathematics and science teaching force, K–12 student achievement in mathematics and science, and other presumed program outcomes? (2) What factors or attributes have accelerated or constrained progress in the MSP Program's achievements? and (3) How have institutions of higher education (IHEs) disciplinary faculty (mathematics, science, and engineering) participated in the MSP Program, and what has been their role in the Program's achievements?

Respondents: Individuals and not-for-profit institutions.

Estimated Number of Annual Respondents: 1,200.

Burden on the Public: 3,000 hours.

Dated: August 19, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–16825 Filed 8–23–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material.

2. *Current OMB approval number:* 3150–0017.

3. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. Information submitted in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.

4. *Who is required or asked to report:* All persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

5. *The estimated number of annual respondents:* 20,631 (4,485 NRC licensees and 16,146 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 248,034 (NRC licensees 53,948 hours [25,983 reporting + 27,965 recordkeeping] and Agreement State licensees 194,086 hours [93,431 reporting + 100,655 recordkeeping] or 8.2 hours per response and 6.2 hours her recordkeeper).

7. *Abstract:* 10 CFR part 30 establishes requirements that are applicable to all persons in the United States governing domestic licensing of radioactive byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination whether the possession, use, and transfer of byproduct material is in conformance with the Commission's regulations for protection of the public health and safety.

Submit, by October 24, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/publicinvolve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 18th day of August, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–4618 Filed 8–23–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Dominion Energy Kewaunee, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Dominion Energy Kewaunee, Inc., (the licensee) to withdraw its June 1, 2004, application for proposed amendment to Facility Operating License No. DPR–43 for the Kewaunee Nuclear Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would have modified the Technical Specifications (TS) to revise TS 1.0, ''Definitions,'' Table 3.5–2, ''Instrument Operation Conditions for Reactor Trip,'' and Table 4.1–1, ''Minimum Frequencies for Checks, Calibrations, and Test of Instrument Channels,'' proposed to change the requirement to perform the channel test and channel calibration ''once per operating cycle.'' The proposed changes would have added a definition for ''staggered test basis,'' increase surveillance test intervals for the analog channels and logic cabinets of the reactor protection system and engineered safety featured actuation system, and would have added a completion time for the reactor trip breakers. Subsequently, by letter date August 4, 2005, you withdrew the amendment request. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 6, 2004 (69 FR 40676). However, by letter dated August 4, 2005, the licensee withdrew the proposed amendment.

For further details with respect to this action, see the application for amendment dated June 1, 2004, and the licensee's letter dated August 4, 2005, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of August, 2005.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4617 Filed 8–23–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8006]

Notice of Termination of Release of Kerr McGee Corporation, Technical Center, in Oklahoma City, OK for Unrestricted Use

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license termination and site release for unrestricted use.

FOR FURTHER INFORMATION CONTACT: Rachel S. Browder, M.S., Health Physicist, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; Telephone: (817) 276–6552; fax number: (817) 860–8122; e-mail: *rsb3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR Part 2.106, the U.S. Nuclear Regulatory Commission (NRC) is providing notice of termination of Source Material License No. SUB–986, and authorizing the release of Kerr McGee Corporation Technical Center (Licensee) located at 3301 NW 150th Street, Oklahoma City, Oklahoma, for unrestricted use. The Licensee's request for an amendment to authorize decommissioning of its Technical Center was previously noticed in the **Federal Register** on July 12, 2001 (66 FR 36605) with an opportunity for hearing.

Kerr McGee Corporation provided a final radiological status survey and performed an indoor and outdoor dose analysis to demonstrate the site meets the license termination criteria in Subpart E of 10 CFR Part 20. In addition, NRC staff conducted independent measurements of soils and surfaces at the site. The NRC staff has evaluated Kerr McGee Corporation's request, reviewed the results of the final radiological survey, and determined that the site meets the unrestricted use dose criteria in 10 CFR 20.1402. The Commission has concluded that the site is suitable for release for unrestricted use and has terminated the license for Kerr McGee Corporation Technical Center, Oklahoma City, Oklahoma, property. The NRC staff issued a Final Safety Evaluation Report (SER) on August 1, 2005, to support the proposed action.

II. Further Information

The NRC has prepared a Final SER that documents the information that was

reviewed and NRC's conclusion. In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' details with respect to this action, including the Final SER and accompanying documentation included in the license amendment package are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you may access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Kerr McGee Technical Center (KMTC) ''Revised Decommissioning Plan,'' April 5, 2001, ML011840119 and ML011840269; KMTC Response to NRC Request for Information, March 6, 2002, ML020670216; KMTC Clarification and Modification to DCGLs, October 16, 2002, ML022940089; KMTC Final Status Survey Report Outdoor Survey Units, September 2003, ML033020108; KMTC Final Status Survey Report Indoor Survey Units, April 2004, ML041100784; KMTC Supplement to Indoor Final Status Survey Report, December 2004, ML043520247; Final Safety Evaluation Report, August 1, 2005, ML052130413. If you do not have access to ADAMS or if there are problems with accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at (800) 397–4203, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas, this 15th day of August, 2005.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E5–4619 Filed 8–23–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 30, 2005, 9:30 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) IDMS to DB2 Conversion

(2) Discussion on Field Service Hiring

(3) Decision on Reconsideration—DisAbility ReDesign, Inc.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: August 18, 2005.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 05–16893 Filed 8–22–05; 9:51 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 30, 2005, 9:30 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, IL. 60611. The agenda for this meeting follows:

(1) IDMS to DB2 Conversion

(2) Discussion on Field Service Hiring

(3) Decision on Reconsideration—DisAbility ReDesign, Inc.

(4) Discussion of the Fiscal Year 2007 Budget

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: August 18, 2005.

Beatrice Ezerski,

Secretary to the Board

[FR Doc. 05–16900 Filed 8–22–05; 9:58 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34–52293; IA–2417; File No. S7–25–99]

RIN 3235–AH78

Certain Broker-Dealers Deemed Not To Be Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB approval of collections of information.

FOR FURTHER INFORMATION CONTACT: Robert L. Tuleya, Senior Counsel, (202) 551–6787, *IArules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: In conjunction with Investment Advisers Act of 1940 rule 202(a)(11)–1,[1] the Securities and Exchange Commission submitted certain existing collections of information to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has approved changes to these collection of information requirements which are described in *Certain Broker-Dealers Deemed Not To Be Investment Advisers.*[2] The titles of the affected collections of information are: ''Form ADV'' (OMB Control No. 3235–0049); ''Form ADV-NR'' (OMB Control No. 3235–0240); ''Form ADV–W and Rule 203–2'' (OMB Control No. 3235–0313); ''Rule 203–3 and Form ADV–H'' (OMB Control No. 3235–0538); ''Rule 204–2'' (OMB Control No. 3235–0278); ''Rule 204–3'' (OMB Control No. 3235–0047); ''Rule 204A–1'' (OMB Control No. 3235–0596); ''Rule 206(4)–3'' (OMB Control No. 3235–0242); ''Rule 206(4)–4'' (OMB Control No. 3235–0345); ''Rule 206(4)–6'' (OMB Control No. 3235–0571); and ''Rule 206(4)–7'' (OMB Control No. 3235–0585).

Dated: August 18, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–16867 Filed 8–23–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52297; File No. SR–Amex–2005–080]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Fees in Connection With Merger Spreads and Short Stock Interest Spreads

August 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 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 and II below, which Items have been prepared

[1] 17 CFR 275.202(a)(11)–1.

[2] Investment Advisers Act Rel. No. 2376 (Apr. 12, 2005) [70 FR 20424 (Apr. 19, 2005)].

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Amex Options Fee Schedule to include ''merger spreads'' and ''short stock interest spreads'' as qualified spread transactions (''Spread Trades'').

The text of the proposed rule change is available from the Exchange's Web site (*http://www.amex.com*), at the principal office of the Exchange, 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 Amex 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 III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Amex Options Fee Schedule to include ''merger spreads'' and ''short stock interest spreads'' in the definition of ''Spread Trades,'' which are subject to reduced transaction fees [3] for non-member market makers and non-member broker-dealers, and a $2,000 fee cap per trade, exclusive of any license fees, applicable to specialists, registered options traders (''ROTs''), member broker-dealers (*i.e.*, Firms), non-member market makers, and non-member broker-dealers (*i.e.*, Broker-Dealers).[4] In addition, the proposal would revise footnote 1 of the Options Fee Schedule to reflect the change of the symbol for the Nasdaq-100 Index Tracking Stock from ''QQQ'' to ''QQQQ.'' [5] Qualified Spread Trades currently include: (a) Reversals and conversions, (b) dividend spreads, (c) box spreads, and (d) butterfly spreads.[6]

The Amex currently imposes charges for transactions in options executed on the Exchange by specialists, ROTs, member broker-dealers, non-member market makers, and non-member broker-dealers. Current per-contract transaction fees for specialists, ROTs, member broker-dealers, non-member market makers, and non-member broker-dealers in equity options are $0.20, $0.20, $0.26, $0.30, and $0.26, respectively, per contract side. In connection with index options, current per-contract transaction fees for specialists, ROTs, member broker-dealers, non-member broker-dealers, and non-member market makers are $0.31, $0.31, $0.22, $0.22, and $0.31, respectively, per contract side.[7]

A non-member broker-dealer or a non-member market maker that executes a Cabinet Trade or a qualified Spread Trade already would be subject to a fee rebate program. The options transaction fee, the options comparison fee, and the options floor brokerage fee are reduced by $0.03, $0.01, and $0.02, respectively. With respect to a Cabinet Trade or a qualified Spread Trade in a QQQQ option, the options transaction fee, the options comparison fee, and the options floor brokerage fee are reduced by $0.09, $0.01, and $0.02, respectively. In addition, a Cabinet Trade or a Spread Trade by a specialist, a ROT, a member broker-dealer, a non-member market maker, or a non-member broker-dealer also would be subject to a fee cap of $2,000 per trade, exclusive of the options licensing fee.[8]

A merger spread is defined as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long option position. Merger spreads are executed prior to the date that shareholders of record are required to elect their respective form of consideration (*i.e.*, cash or stock).

A short stock interest spread is defined as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position. This strategy is used to capture short stock interest.

The Exchange submits that merger spreads and short stock interest spreads should qualify as Spread Trades under the Amex Options Fee Schedule for the purpose of attracting additional order flow. The Exchange notes that merger spreads and short stock interest spreads are entered into by professionals with narrow profit margins and, therefore, believes that, by qualifying for reduced and capped fees, these professionals may find the Exchange an attractive venue to execute their trades. The Exchange further believes that qualifying merger spreads and short stock interest spreads as Spread Trades will increase the ability of the Exchange to compete with the other options exchanges for order flow in connection with these options strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [9] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members of the exchange 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 would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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

[3] Transaction fees are comprised of options transaction fees, options comparison fees, and options floor brokerage fees. *See* Amex Options Fee Schedule. *See also* footnote 4, *infra*.

[4] The Commission notes that clarifying changes were made to the purpose section of the proposed rule change. Telephone conversations between Jeffrey P. Burns, Associate General Counsel, Amex, Cyndi N. Rodriguez, Special Counsel, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on August 10 & 18, 2005.

[5] On December 1, 2004, the Nasdaq-100 Index Tracking Stock transferred its listing from the Amex to the Nasdaq Stock Market, Inc. It now trades on Nasdaq under the symbol QQQQ. The Amex, pursuant to unlisted trading privileges, trades the QQQQ.

[6] *See* Amex Options Fee Schedule, footnote 1. *See also* footnote 4, *supra*.

[7] *See* footnote 4, *supra*.

[8] *Id.*

[9] 15 U.S.C. 78f(b)(4).

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2005–080 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–Amex–2005–080. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2005–080 and should be submitted on or before September 14, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the exchange's facilities. Amending the Amex's Options Fee Schedule to include ''merger spreads'' and ''short stock interest spreads'' in the definition of ''Spread Trades,'' thereby rendering these types of trades eligible for reduced and capped fees, is a reasonable measure to improve the Exchange's competitiveness. The Commission notes that similar proposals to reduce and cap fees for certain trades, including those occurring as part of merger spreads and short stock interest spreads, have been adopted by other options exchanges.[12]

The Amex has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Granting accelerated approval of the proposal will allow the Amex to immediately implement a fee change that is similar to arrangements already in place at other option exchanges. Furthermore, the Commission believes that granting accelerated approval of the proposed rule change will allow the Amex to implement reasonable fee reductions to various market participants without undue delay. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[13] for approving the proposed rule change prior to the thirtieth day after the publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2005–080), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4626 Filed 8–23–05; 8:45 am]

BILLING CODE 8010–01–P

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(4).

[12] Most of the proposals by other options exchanges were filed as pilot programs pursuant to Section 19(b)(3)(A) of the Act, rendering the proposals effective upon filing with the Commission. *See* Securities Exchange Act Release Nos. 51468 (April 1, 2005), 70 FR 17742 (April 7, 2005) (SR–CBOE–2005–18); 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR–Phlx–2005–19); 51657 (May 5, 2005), 70 FR 24851 (May 11, 2005) (SR–Phlx–2005–22); 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005) (SR–PCX–2005–65); and 51828 (June 13, 2005), 70 FR 35475 (June 20, 2005) (SR–CBOE–2005–42). However, one proposal to make the fee cap applicable to short stock interest spread transactions retroactive to January 1, 2005 was filed with and approved by the Commission pursuant to Section 19(b)(2) of the Act. *See* Securities Exchange Act Release No. 52083 (July 20, 2005), 70 FR 43733 (July 28, 2005) (SR–PCX–2005–67).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52296; File No. SR–BSE–2005–30]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto Relating to the Removal of Unreliable Quotes From the Exchange's Calculation of the National Best Bid or Offer

August 18, 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 July 27, 2005, the Boston Stock Exchange, Inc. (''BSE'') 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 BSE. The BSE filed Amendment No. 1 to the proposed rule change on August 5, 2005 and withdrew Amendment No. 1 on August 12, 2005. The BSE filed Amendment No. 2 to the proposed rule change on August 12, 2005.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE is proposing to add subsection (e) of Section 3 of Chapter XII of the Boston Options Exchange (''BOX'') Rules to add provisions for declaring an away market's quote(s) in a particular class of option(s) unreliable, and to thereby exclude quote(s) from BOX's NBBO determination when an away market: (1) Is disconnected from the Intermarket Option Linkage (''Linkage''); (2) disseminates non-firm quotes; or (3) has other quoting problems. The text of the proposed rule change is available on the BSE's Web site (*http://www.bostonstock.com*), at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated August 12, 2005 (''Amendment No. 2''). Amendment No. 2 added clarifying language and corrected typographical and technical errors.

the BSE'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 BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to allow BOX to exclude an away market's quote(s) from BOX's NBBO determination in a particular option class(es) when that away market's quote(s) are unreliable. The BOX Trading Host, pursuant to obligations to avoid trade-throughs under the Intermarket Option Linkage Plan, in general, filters certain orders to either trade on BOX if the best BOX price is at the NBBO, or if the best BOX price is not at the NBBO, to access the best price for such order through Linkage. In certain circumstances, away markets disseminate unreliable or inaccessible quotes in a particular option class(es) to OPRA. BOX proposes to eliminate such away market unreliable or inaccessible quote(s) in a particular class(es) in BOX's NBBO determination, thereby only including in BOX's NBBO determination market quotes that are reliable and accessible to investors. BOX seeks only to exclude an away market's unreliable quote(s) in a particular class(es) from BOX's NBBO determination for such time that the quote(s) remain unreliable. Utilizing only reliable accessible quotes in the NBBO determination provides for a more appropriate NBBO determination and a significantly more efficient marketplace.

The procedure for declaring an away market's quote(s) unreliable would be for the Market Operations Center (''MOC'') to either: (a) Receive a message from the away market, OPRA, or the OLA Administrator; or (b) confirm with the affected market, that the away market's particular quote(s) in a class(es) are unreliable. Then the MOC would request the Options Official declare the away market's quote(s) in a particular class(es) unreliable. Upon a declaration that the away market's quote(s) is unreliable, the MOC will both remove the quote(s) from BOX's NBBO determination and promptly notify the affected away market. Additionally, the MOC will continue to monitor the reliability of the affected away market's quote(s) and resume inclusion of the affected away market's quote(s) in BOX's NBBO determination at the end of the trading day or once the quote(s) is confirmed to be reliable, whichever occurs first. Quotes of an away market are confirmed to be reliable once: (a) A message stating a quote(s) in a particular option class is reliable has been received from the affected away market, OPRA, or the OLA Administrator; or (b) the MOC has verbally received confirmation of such from the affected away market.

2. Statutory Basis

The basis under the Act for this proposed rule change is that BOX believes that its proposal is consistent with Section 6(b) of the Act,[4] and furthers the objectives of Section 6(b)(5) of the Act[5] in that the proposed rule change is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade. Excluding unreliable quotes from BOX's determination of the NBBO would help BOX provide better executions to customers. Currently, the execution of customer orders is delayed when another market appears to be at the NBBO but such market's quotes are inaccessible.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The BSE has neither solicited nor received comments on the proposed rule change.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the BSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2005–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–BSE–2005–30. 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 BSE. All comments received will be posted

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2005–30 and should be submitted on or before September 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4628 Filed 8–23–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52295; File No. SR–CFE–2005–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by CBOE Futures Exchange, LLC Relating to Its Listing Standards for Security Futures Products

August 18, 2005.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 [1] (''Act'') and Rule 19b–7 under the Act,[2] notice is hereby given that on July 26, 2005, CBOE Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''), together with a written certification under Section 5c(c) of the Commodity Exchange Act (''CEA'')[3] on July 25, 2005.

I. Self-Regulatory Organization's Description of the Proposed Rule Change [4]

CFE is proposing to adopt rules regarding listing standards for security futures contracts (''Eligibility and Maintenance Criteria'') to comply with the requirements under Section 6(h)(3)[5] of the Act and the criteria under Section 2(a)(1)(D)(i) of the CEA.[6] The text of the proposed rule change is available on CFE's Web site *(http://cfe.cboe.com)*, at CFE's principal office, and at the Commission's Public Reference Room. The CFE Listing Standards [7] are, for the most part, identical to the sample listing standards (''Sample Listing Standards'') included in the Commission's Staff Legal Bulletin No. 15 (''SLB 15''),[8] except that the CFE Listing Standards:

- Reflect the modifications to the statutory listing standards requirements jointly adopted by the Commission and the CFTC with respect to shares of exchange-traded funds (''ETFs''), trust-issued receipts (''TIRs''), shares of registered closed-end management investment companies (''Closed-End Fund Shares''), and American Depositary Receipts (''ADRs'');[9]
- Establish an approximately equal dollar-weighting methodology for physically-settled futures based on narrow-based security indices (all narrow-based security index futures are referred to hereafter as ''NBI futures''),[10] which (i) requires the number of shares or receipts of each component security to be rounded up or down to the nearest multiple of 100 in the course of the determination of the initial index composition and any subsequent rebalancing; (ii) contemplates mandatory annual rebalancing of such indices under specified circumstances, complemented by CFE's ability to rebalance indices on an interim basis if it so elects; and (iii) ensures that outstanding contracts will not be affected by any rebalancing; and
- Contain certain provisions that reflect rule changes that have been filed by other security futures exchanges since the adoption of SLB 15, which vary from the Sample Listing Standards set forth in SLB 15.

CFE is also filing herewith CFE Rules 215, 403, 412–415, 417, 501, 601–605, 610–615, 1801–1806, and 1901–1906, all of which remain unchanged from the CFE Rulebook filed with the Commission as part of CFE's notice registration on Form 1–N. These rules are being filed herewith because they relate to the listing standard requirements set forth in Section 6(h)(3) of the Act [11] as further described below. CFE Rule 517 and CFE Policy and Procedure VII, while also referenced in Item II below, are not filed in this proposed rule change because they were the subjects of a separate filing by CFE on SEC Form 19b–4.[12]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CFE has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from its members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

Section 6(h)(3) of the Act [13] sets forth a number of requirements for listing standards applicable to security futures products. Among other things, that Section provides that such listing standards must (i) be no less restrictive than comparable listing standards for options traded on a national securities exchange [14] and (ii) require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.[15]

1. CFE Listing Standards

Commission staff published SLB 15, including the Sample Listing Standards (which were derived from typical listing standards used by exchanges trading options based on securities or security indices), to provide guidance as to how an exchange can comply with the foregoing requirements. SLB 15 also

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] With the consent of the CFE, the Commission has made minor clarifications to the text of the descriptions in this Part I and to the statement of purpose in Part II.A below. Telephone call between David Doherty, Attorney, CFE, and Ira Brandriss, Special Counsel, and Nathan Saunders, Special Counsel, Division of Market Regulation, Commission, August 9, 2005.

[5] 15 U.S.C. 78f(h)(3).

[6] 7 U.S.C. 2(a)(1)(D)(i).

[7] The CFE Listing Standards are set forth in proposed Policy and Procedure VIII, Eligibility and Maintenance Criteria for Security Futures.

[8] SEC, Division of Market Regulation, Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001) (available at *http://www.sec.gov/interps/legal/mrslb15.htm*).

[9] *See* Joint Order Granting the Modification of Listing Standards Requirements Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) (ETFs, TIRs and Closed-End Fund Shares); Joint Order Granting the Modification of Listing Standards Requirements, Securities Exchange Act Release No. 44725 (August 20, 2001) (ADRs).

[10] CFE Policy and Procedures VIII(C) and VIII(D) contain listing requirements that relate to the initial eligibility criteria and maintenance standards, respectively, for approximately equal dollar-weighted, physically-settled narrow-based security indices.

[11] 15 U.S.C. 78f(h)(3).

[12] *See* File No. SR–CFE–2005–02 (filed July 27, 2005).

[13] 15 U.S.C. 78f(h)(3).

[14] 15 U.S.C. 78f(h)(3)(C).

[15] 15 U.S.C. 78f(h)(3)(H).

noted that different listing standards could also be consistent with the Act.

The CFE Listing Standards follow the Sample Listing Standards, subject to the additional modifications relating to ETFs, TIRs, Closed-End Fund Shares, and ADRs; the establishment of an additional weighting methodology for certain physically-settled NBI futures described under Item I above; and certain other rule changes that were filed with the Commission and the CFTC by OneChicago, LLC (''OneChicago'')[16] which pertained to OneChicago's listing standards for security futures. Therefore, the CFE Listing Standards as set forth herein do not contain any listing standards that have not already been reviewed by the Commission. The CFE Listing Standards permit CFE to trade both cash-settled and physically-settled NBI futures on the following types of indices: capitalization-weighted, modified capitalization-weighted, price-weighted, and equal dollar-weighted. The modifications to SLB 15, including the modifications that permit CFE to list approximately equal-dollar weighted, physically-settled NBI futures, are explained in further detail below.

2. Modifications of SLB 15

a. *Modification of SLB 15 I(A)(i).*

The modifications set forth in the CFE listing standards that relate to shares of ETFs, TIRs, Closed-End Fund Shares, and ADRs reflect the modifications to the statutory listing standards requirements adopted by the Commission and the CFTC subsequent to the publication of SLB 15.[17] These standards are reflected in Section A(1)(i) of CFE Policy and Procedure VIII.

b. *Modification of SLB 15 III(A)(ii).*

The modifications that relate to narrow-based security indices are intended to allow CFE to provide for an additional weighting methodology, called an ''approximately equal dollar-weighted'' methodology, that would be available only for physically-settled NBI futures, and accordingly, are limited in application to such physically-settled contracts. These modifications are designed to enhance the usefulness and effectiveness of physically-settled NBI futures in connection with hedging, arbitrage and other investment strategies.

The proposed approximately equal dollar-weighted methodology contemplates narrow-based security indices consisting of component securities in increments that are no less than 100 shares or receipts, which corresponds to customary increments for transactions in the markets for those securities. For this reason, rounding will be a necessary step in the determination of the initial index composition and any subsequent rebalancing. The underlying index of a physically-settled NBI future that uses an approximately equal dollar-weighted methodology would be rebalanced annually, but only if the aggregate value of the security position with the highest value is two or more times greater than the aggregate value of the security position with the lowest value in the index for a specified time period. CFE will also have the ability to rebalance any approximately equal dollar-weighted narrow-based security index on an interim basis (but no more frequently than quarterly) should this become necessary as a result of exceptional changes in the relative values of the component securities. As CFE plans to list only physically-settled NBI futures contracts expiring on the next two quarterly expiration dates and the nearest two serial monthly expiration dates that are not quarterly expiration dates, CFE will be able to phase in contracts that are based on a rebalanced narrow-based security index, and thereby replace contracts with open interest that are based on the previous narrow-based security index composition within a short period of time. CFE also believes that investors in approximately equal dollar-weighted NBI futures contracts should be able to rely on the number of shares or receipts evidencing each component security remaining unchanged for the duration of those contracts. Therefore, the CFE Listing Standards state that outstanding contracts overlying approximately equal dollar-weighted narrow-based security indices will not be affected by any rebalancing. The proposed listing standards for approximately equal dollar-weighted narrow-based security indices are identical to the listing standards for approximately equal dollar-weighted narrow-based security indices that were set forth in the OneChicago rules prior to a recent filing of an immediately effective proposed rule change by OneChicago.[18] In addition, the contents of the CFE Listing Standards, including the approximately equal dollar-weighting methodology described above, will be publicly available and fully disclosed. These standards are reflected in Sections C(1)(ii) and D(1)(ii) of CFE Policy and Procedure VIII.

c. *Modification of SLB 15 I(A)(vi).*

CFE is adopting the initial listing standard implemented by OneChicago in SR–OC–2004–02,[19] which would permit CFE to list a single stock future on an underlying security that had trading volume of at least 2,400,000 shares in the preceding 12 months. This standard is reflected in Section A(1)(vi) of CFE Policy and Procedure VIII.

d. *Modification of SLB 15 I(A)(vii).*

CFE is adopting the initial listing standards implemented by OneChicago in SR–OC–2003–01,[20] which would permit a single stock future to be listed on a security that is a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933[21] if the market price of the underlying security has been at least $3.00 for the five consecutive business days prior to the date on which CFE submits a certificate to The Options Clearing Corporation (''OCC'') for listing and trading the futures contract. The market price of the underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. CFE rules would also require that an underlying security that is not a ''covered security'' meet the price requirement that it have a market price of at least $7.50 for the majority of the business days for the three calendar months preceding selection. These standards are reflected in Sections A(1)(viii) and A(1)(ix) of CFE Policy and Procedure VIII.

e. *Modification of SLB 15 II(A)(iv).*

CFE is adopting the maintenance standard implemented by OneChicago in SR–OC–2003–04[22] (as amended by SR–OC–2003–08),[23] pursuant to which CFE would not open for trading a new delivery month for a single stock future trading on CFE if the market price per share of the underlying security closed below $3.00 on the previous trading day to the expiration day of the nearest expiring contract on the underlying

[16] *See* SR–OC–2002–04 (Securities Exchange Act Release No. 47114 (December 31, 2002), 68 FR 837 (January 7, 2003)) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Listing Standards for Security Futures Products); *see also* SR–OC–2003–01 (Securities Exchange Act Release No. 47356 (February 12, 2003), 68 FR 8064 (February 19, 2003)); SR–OC–2003–04 (Securities Exchange Act Release No. 47445 (March 5, 2003), 68 FR 11595 (March 11, 2003)); SR–OC–2003–06 (Securities Exchange Act Release No. 48191 (July 17, 2003), 68 FR 43555 (July 23, 2003)); SR–OC–2003–08 (Securities Exchange Act Release No. 48660 (October 20, 2003), 68 FR 61027 (October 24, 2003)); and SR–OC–2004–02 (Securities Exchange Act Release No. 50373 (September 14, 2004), 69 FR 56470 (September 21, 2004)).

[17] *See supra* note 9.

[18] *See* SR–OC–2005–02 (Securities Exchange Act Release No. 52180 (July 29, 2005), 70 FR 45464 (August 5, 2005)).

[19] *See supra* note 16.

[20] *See id.*

[21] 15 U.S.C. 77r(b)(1)(A).

[22] *See supra* note 16.

[23] *See id.*

security. The market price per share of the underlying security would be determined by the closing price reported in the primary market in which the underlying security is traded. This standard is reflected in Section B(1)(v) of CFE Policy and Procedure VIII.

3. Section 6(h)(3) Requirements

Section 6(h)(3) of the Act[24] contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how CFE will comply with it, whether by particular provisions in the CFE Listing Standards or otherwise.

Clause (A) of Section 6(h)(3) of the Act[25] requires that any security underlying a security future be registered pursuant to Section 12 of the Act.[26] This requirement is addressed in Sections A(1)(ii), B(1)(i), C(1)(ii)(b), and D(1)(ii)(a) of CFE Policy and Procedure VIII.

Clause (B) of Section 6(h)(3) of the Act[27] requires that a market on which a physically-settled security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. CFE has entered into an arrangement with OCC, which is a registered clearing agency, relating to the clearing of security futures products. By virtue of OCC having in place arrangements with the National Securities Clearing Corporation for the delivery of securities underlying physically-settled security futures products, CFE believes that the payment and delivery of the securities underlying CFE's security futures products in accordance with the statutory requirements should be ensured.

Clause (C) of Section 6(h)(3) of the Act[28] provides that listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[29] For the reasons discussed under Item II.A.1 above, notwithstanding specified differences between the Sample Listing Standards and the CFE Listing Standards, CFE believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3) of the Act[30] requires that each security future be based on common stock or such other equity securities as the Commission and the CFTC jointly determine appropriate. This requirement is addressed in Sections A(1)(i), C(1)(ii)(c), and D(1)(ii)(b) of CFE Policy and Procedure VIII.

Clause (E) of Section 6(h)(3) of the Act[31] requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. CFE notes that pursuant to Section 6(h)(7) of the Act,[32] the foregoing requirement is deferred until the ''compliance date'' (as defined therein). CFE expects OCC will have in place procedures complying with the requirements of clause (E) upon and after such compliance date.

Clause (F) of Section 6(h)(3) of the Act[33] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act[34] may effect transactions in a security futures product. This requirement is addressed by CFE Rule 605, Sales Practice Rules. CFE Rule 605 requires each Trading Privilege Holder (including its Related Parties) to comply with the sales practice rules applicable to such Trading Privilege Holder from time to time promulgated by the National Futures Association or the National Association of Securities Dealers, both of which are national securities associations.

Clause (G) of Section 6(h)(3) of the Act[35] requires that each security futures product be subject to the prohibition against dual trading in Section 4j of the CEA[36] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act[37] and the rules and regulations thereunder. Trading Privilege Holders and their Related Parties trading on CFE will be subject to the aforementioned statutory and regulatory prohibitions against dual trading by virtue of CFE Rule 604, Adherence to Law, which requires them to comply with all applicable law. CFE Rules 610 through 613 contain customary provisions relating to the priority of customers' orders, trading against customers' orders, withholding orders and disclosing orders, consistent with CFTC Regulations §§ 155.2 through 155.4[38] under the CEA. CFE notes, however, that the prohibition of dual trading in security futures products as set forth in CFTC Regulation § 41.27[39] adopted pursuant to Section 4j(a) of the CEA[40] by its terms only applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined algorithm.[41] Since those conditions do not exist on CFE, CFE has no specific rule prohibiting dual trading.

Clause (H) of Section 6(h)(3) of the Act[42] requires that trading in a security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. As discussed above, the eligibility and maintenance criteria for security futures products contained in the CFE Listing Standards have been designed to ensure that the products that will be listed on CFE and the underlying securities will not be readily susceptible to price manipulation. In addition, CFE Rules 415, Block Trading, 603, Market Manipulation, 614, Pre-Arranged Trades, and 615, Simultaneous Buying and Selling Orders, either prohibit market manipulation outright (for example, CFE Rule 603 forbids generating unnecessary volatility or creating a condition where prices do not or will not reflect fair market values) or contain standards and limitations that are designed to prevent market manipulation.

CFE's position limit standards set forth in CFE Rule 412, Position Limits, are designed to prevent market manipulation with respect to physically-settled NBI futures through the adoption of the position limits established under CFTC Regulation § 41.25.[43] With respect to cash-settled NBI futures, CFE Rule 1902(e), Speculative Position Limits, adopts the

[24] 15 U.S.C. 78f(h)(3).
[25] 15 U.S.C. 78f(h)(3)(A).
[26] 15 U.S.C. 78*l*.
[27] 15 U.S.C. 78f(h)(3)(B).
[28] 15 U.S.C. 78f(h)(3)(C).
[29] 15 U.S.C. 78*o*–3(a).
[30] 15 U.S.C. 78f(h)(3)(D).
[31] 15 U.S.C. 78f(h)(3)(E).
[32] 15 U.S.C. 78f(h)(7).
[33] 15 U.S.C. 78f(h)(3)(F).
[34] 15 U.S.C. 78*o*–3(a).
[35] 15 U.S.C. 78f(h)(3)(G).
[36] 7 U.S.C. 6j.
[37] 15 U.S.C. 78k(a).
[38] 17 CFR 155.2–155.4.
[39] 17 CFR 41.27.
[40] 7 U.S.C. 6j(a).
[41] 17 CFR 41.27(b)(2).
[42] 15 U.S.C. 78f(h)(3)(H).
[43] 17 CFR 41.25.

position limit standards set forth in OneChicago Rule 1002(e)(2) and applies those standards to all cash-settled NBI futures traded on CFE.[44] Under CFE Rule 1902(e), CFE calculates two numbers: the Market Cap Position Limit and the SSF Position Limit. The Market Cap Position Limit is based on the market capitalization of each NBI future and the notional value compared to the market capitalization of the Chicago Mercantile Exchange Inc. (''CME'') position limit for its futures contract on Standard & Poor's (''S&P'' 500 Index. The SSF Position Limit is based on the current position limit permitted for single stock futures under CFTC Regulation § 41.25.[45] CFE imposes a position limit on each cash-settled NBI future equal to the lower of the Market Cap Position Limit and the SSF Position Limit, rounded to the nearest multiple of 1,000 contracts; provided, however, that if the lower of the two limits is less than 500 but not less than 400, the position limit for such future is rounded up to 1,000 contracts.

To calculate the Market Cap Position Limit, CFE determines the market capitalization of the S&P 500 Index (as of the selection date for the component securities in the index underlying the NBI future), then calculates the notional value of a position at the limit of CME's S&P 500 Index futures contract (''S&P 500 Notional Value Limit'')[46] and divides the first amount by the second to determine the market capitalization ratio (''Market Cap Ratio'').[47] CFE then determines the market capitalization of the index underlying the NBI future (''Stock Index Market Cap'')[48] and the notional value of the index underlying the NBI future (''Notional Value'').[49] To calculate the Market Cap Position Limit, CFE divides the Stock Index Market Cap by the Notional Value multiplied by the Market Cap Ratio.[50]

To calculate the SSF Position Limit for an NBI future, CFE first calculates its Notional Value in the same manner as described above.[51] Then, for each component security in the index underlying the NBI future, CFE multiplies the index weight of the component security[52] by the Notional Value to determine the security's proportion of the NBI future (''Share Weighting''). CFE then divides each security's Share Weighting by its price to calculate the number of shares of that security represented in the NBI futures contract (''Implied Shares''). CFE then, for each component security in the index underlying the NBI future, divides its Implied Shares by 100 to obtain the implied number of 100-share contracts of such component security in each NBI futures contract. CFE then divides the applicable single stock futures contract speculative position limit permitted under CFTC Regulation § 41.25(a)(3)[53] (either 13,500 or 22,500 contracts) for each component security by the number of implied 100-share contracts. This equals the number of NBI futures contracts that could be held without exceeding the speculative position limit on a futures contract on that component security (''Implied SSF Speculative Limit''). If a component security qualified for position accountability under CFTC Regulation 41.25(a)(3),[54] that security would be ignored for purposes of this calculation. After calculating the Implied SSF Speculative Limit for each security in the index underlying the NBI future, CFE identifies the lowest Implied SSF Speculative Limit as the SSF Position Limit for that NBI future.

CFE Rules 413(b), Price Limits; Final Settlement Prices, and 417, Regulatory Halts, implement the requirements contained in Rule 6h–1 under the Act[55] relating to settlement and regulatory halts with respect to security futures products.

With respect to final settlement prices, CFE Rule 1902(i), Settlement Price, establishes how the final settlement price is determined for cash-settled NBI futures. Under CFE Rule 1902(i), a special opening quotation of the relevant index underlying the NBI future will be derived from the sum of the opening prices[56] of each component stock. When all of the component stocks have opened, the final special opening quotation will be calculated and disseminated.

If the price of one or more of the component securities is not readily available[57] on the day scheduled for determination of the final settlement price, the price of the component security or securities shall be based on the next available opening price of that security, unless the President of the Exchange or his designee for such purposes (''Designated Officer'') determines that one or more component securities are not likely to open within a reasonable time. If the Designated Officer makes such a determination, the price of the relevant component security or securities for purposes of calculating the final settlement price will be the last trading price of the security or securities during the most recent regular trading session for such security or securities.

CFE Rule 1902(i) also provides that the Rule shall not be used to calculate the final settlement price of an NBI future if OCC fixes the final settlement price of the NBI future in accordance with OCC's rules and by-laws and as permitted under the Commission's Rule 6h–1(b)(3)[58] and CFTC Regulation 41.25(b)(3).[59]

Clause (I) of Section 6(h)(3) of the Act[60] requires that procedures be in place for coordinated surveillance among the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading. The relevant provisions are CFE Rules 601, 602 and 603, which prohibit fraudulent acts, fictitious transactions and market manipulation, respectively. CFE notes that it is an affiliate member of the Intermarket Surveillance Group (''ISG'') and has executed (1) an Agreement to

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[44] Consistent with CFTC Regulation 41.25, position limits apply to positions in any cash-settled NBI future held during the last five trading days of an expiring contract.

[45] 17 CFR 41.25.

[46] The speculative position limit for the CME's S&P 500 Index futures contract is 20,000 contracts (in all months combined) and the contract multiplier is $250. Thus, S&P 500 Notional Value Limit = Level of the S&P 500 Index * 20,000 * 250.

[47] Market Cap Ratio = Market Capitalization of the S&P 500 Index / S&P 500 Notional Value Limit.

[48] The Stock Index Market Cap is calculated by adding the market capitalizations of each stock comprising the underlying narrow-based security index.

[49] Notional Value = Level of the index underlying the NBI future * contract multiplier.

[50] Market Cap Position Limit = Stock Index Market Cap / (Notional Value * Market Cap Ratio).

[51] *See supra* note 49.

[52] Index weight of the component security = (assigned shares * price) of the component security / the sum of (assigned shares * price) for each component security.

[53] 17 CFR 41.25(a)(3).

[54] *Id.*

[55] 17 CFR 240.6h–1.

[56] Consistent with 17 CFR 41.1(j), CFE Rule 1902(i)(II)(C)(1) defines ''opening price'' as follows: ''Opening price'' means the official price at which a security opened for trading during the regular trading session of the national securities exchange or national securities association that lists the security. If the security is not listed on a national securities exchange or a national securities association, then ''opening price'' shall mean the price at which a security opened for trading on the primary market for the security. Under this provision, if a component security is an [ADR] traded on a national securities exchange or national securities association, the opening price for the ADR would be derived from the national securities exchange or national securities association that lists it.

[57] Under CFE Rule 1902(i)(II)(C)(4), the price of a security is ''not readily available'' if the underlying market does not open on the date set for determination of the final settlement price, or if the security does not trade on the securities exchange or national securities association that lists the security during regular trading hours.

[58] 17 CFR 240.6h–1(b)(3).

[59] 17 CFR 41.25(b)(3).

[60] 15 U.S.C. 78f(h)(3)(I).

Share Market Surveillance and Regulatory Information between CFE and the full members of ISG; (2) the Agreement to Share Market Surveillance and Regulatory Information between CFE and the affiliate members of ISG; and (3) the Addendum for Security Futures Products to agreements between the full members of ISG and the affiliate members of ISG trading security futures products (including CFE). CFE Rule 215, Regulatory Cooperation, permits CFE to enter into these and other agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators. Under CFE Rule 215, CFE is authorized to provide information to any such organization, association, board of trade or regulator that is a party to an information sharing agreement with CFE, in accordance with the terms and subject to the conditions set forth in such agreement. Additional provisions related to coordinated surveillance are contained in Sections A(1)(x)(a), C(1)(ii)(g), and D(1)(ii)(f) of CFE Policy and Procedure VIII.

Clause (J) of Section 6(h)(3) of the Act[61] requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph. The audit trail capability provided by CBOE*direct*, CFE's trade matching engine, will create and maintain an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on CFE. The information recorded with respect to each order includes: time received, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code and clearing firm. This information will enable CFE to trace each order back to the clearing firm by or through which it was submitted. If any question or issue arises as to the source of an order prior to submission by or through a clearing firm, CFE will request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into CFE systems, and therefore will not be recorded electronically by CBOE*direct* at the time they are placed, CFE Rule 403(b), Order Entry, requires that the Clearing Member or, if applicable, the Trading Privilege Holder or the Authorized Trader receiving such order must prepare an order form in a non-alterable written medium, which must be time-stamped and include the account designation, date and other required information (including order terms, order type, instrument and contract month, price, and quantity). Each such form must be retained for at least five years from the time it is prepared. In addition, CFE Rule 501, Books and Records, establishes a general recordkeeping requirement pursuant to which each Clearing Member and Trading Privilege Holder must keep all books and records required to be kept by it pursuant to the CEA, CFTC regulations, the Act, regulations under the Act, and CFE Rules. CFE Rule 501 also requires that such books and records be made available to CFE upon request. Current CFTC regulations require books and records to be maintained for a period of five years.[62]

Pursuant to CFE Rule 415, Block Trading, block trades will be entered in CBOEdirect by CFE's operations management after they are verbally reported by designated individuals at the Clearing Member for the selling party. At the time of each such verbal report, a trade identification number will be assigned and provided to the caller. Both the buyer and the seller in each trade will then follow up the verbal report by submitting a block trade reporting form via facsimile or email to CFE. The same procedures generally apply to exchange of future for related position (''EFP'') transactions as provided in CFE Rule 414. Since block trades and EFP transactions involve orders that cannot be immediately entered into CFE's systems, the Clearing Members or, if applicable, CFE Trading Privilege Holders or CFE Authorized Traders, must comply with the recordkeeping procedures specified in the preceding paragraph.

Clause (K) of Section 6(h)(3) of the Act[63] requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded. CFE Rule 417, Regulatory Halts, provides for trading in a security future to be halted at all times that a regulatory halt has been instituted for the relevant underlying security or securities.

Clause (L) of Section 6(h)(3) of the Act[64] requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[65] CFE believes that its proposed CFE Rule 517, Customer Margin Requirements for Contracts That Are Security Futures, and CFE Policy and Procedure VII, Security Futures Market Maker Registration Policy and Procedures, which have been filed with the Commission[66] pursuant to Section 19(b)(2) of the Act,[67] together with a written certification under Section 5c(c) of the CEA[68] regarding customer margin, are consistent with the requirements of the Act.

CFE Rules 1801–1806 and 1901–1906 set forth the contract rule specifications that relate to single stock futures and NBI futures, respectively. The contract rule specifications contain information that is specific to the trading of those products on CFE and some of the specification provisions provide additional detail with respect to issues addressed by rule provisions noted above.

For the reasons discussed above, CFE submits that the CFE Listing Standards satisfy the requirements set forth in Section 6(h)(3) of the Act.[69]

Statutory Basis

CFE has filed these proposed rules pursuant to Section 19(b)(7) of the Act.[70] CFE believes the CFE Listing Standards are authorized by, and consistent with, Section 6(b)(5) of the Act[71] because they are designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Since this rule change in conjunction with other related regulatory filings being made by CFE will permit CFE to become authorized to provide a trading venue for security futures, this rule change serves to enhance and promote competition by allowing an additional exchange to list and trade security futures.

[61] 15 U.S.C. 78f(h)(3)(J).

[62] 17 CFR 1.31(a)(1).

[63] 15 U.S.C. 78f(h)(3)(K).

[64] 15 U.S.C. 78f(h)(3)(L).

[65] 15 U.S.C. 78g(c)(2)(B).

[66] *See* File No. SR–CFE–2005–02 (filed July 27, 2005).

[67] 15 U.S.C. 78s(b)(2).

[68] 7 U.S.C. 7a–2(c).

[69] 15 U.S.C. 78f(h)(3).

[70] 15 U.S.C. 78s(b)(7).

[71] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[72] the proposed rule change became effective on July 26, 2005.[73] Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act.[74]

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–CFE–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number SR–CFE–2005–01. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CFE–2005–01 and should be submitted on or before September 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[75]

Margaret H. McFarland,

Deputy Secretary.

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[72] 15 U.S.C. 78s(b)(7)(B).

[73] CFE filed the proposed rule change with the CFTC, together with a written certification under Section 5c(c) of the Commodity Exchange Act CEA, on July 25, 2005. CFE's written certification requested that the proposed rule change become effective on July 26, 2005, the date that the proposed rule change was filed with the Commission.

[74] 15 U.S.C. 78s(b)(1).

[75] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52290; File No. SR–MSRB–2005–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Amendments to MSRB Rule G–20, on Gifts and Gratuities, and MSRB Rule G–8, on Recordkeeping

August 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G–20, on gifts and gratuities, and the related recordkeeping requirements of Rule G–8.[3] The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, 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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

MSRB Rule G–20 prohibits dealers from directly or indirectly giving or permitting to be given any thing or service of value in excess of $100 per year to any person other than an employee or partner of the dealer in relation to the municipal securities activities of the recipient's employer. The rule provides certain exemptions from the $100 annual limit for ''normal business dealings,'' including (i) occasional gifts of meals or tickets to theatrical, sporting and other entertainment; (ii) sponsoring legitimate business functions that are recognized by the IRS as deductible business expenses; and (iii) gifts of reminder advertising. However, such gifts must not be so frequent or excessive as to raise a suggestion of unethical conduct.

MSRB Rule G–20 currently does not mandate specific requirements with respect to non-cash sales incentives, although the general fair practice

[3] The New York Stock Exchange, Inc. (''NYSE'') has a pending rule filing with the Commission on gifts and gratuities that is currently being reviewed. The MSRB has agreed to consider filing further amendments to Rule G–20 or other rules, as necessary, to make its rules on gifts and gratuities consistent with future rule changes made by other self-regulatory organizations (SROs) overseen by the Commission.

principles of Rule G–17 apply.[4] The MSRB has interpreted Rule G–17 in the context of municipal fund securities to provide that a dealer may violate the rule by engaging in marketing activities that result in a customer being treated unfairly, or by engaging in any deceptive, dishonest or unfair practice in connection with such marketing activities.[5] Further, depending on the particular facts and circumstances, a dealer may violate Rule G–17 if it acts in a manner that is reasonably likely to induce another dealer to violate the principles of Rule G–17 or other MSRB customer protection rules.[6] In contrast, NASD Rules 2710(i), 2820(g)(4) and 2830(l)(5) establish specific requirements with respect to the payment of non-cash compensation in connection with offerings of corporate securities, variable contracts and mutual funds.

The MSRB has determined that similar treatment across the securities markets is appropriate and would facilitate dealer understanding of, and compliance with, requirements relating to sales incentives and non-cash compensation. Thus, the proposed amendments are intended to more fully conform Rule G–20 to NASD requirements relating to gifts and gratuities, and to add new provisions governing non-cash compensation and sales incentives in connection with municipal fund securities and other primary offerings of municipal securities, based on NASD requirements for non-cash compensation and sales incentives. The proposed amendments would result in the following changes to Rule G–20:

- Modify the existing provision in Rule G–20 that permits occasional gifts of meals or sports and entertainment tickets, and sponsorship of business functions outside of the $100 per year limitation by requiring that dealer personnel host (accompany) such meals, entertainment and business functions in conformity with NASD gift rule limitations, and further modify the language of the requirement to incorporate NASD language to the effect that such occasional gifts must not call into question the dealer's ethical standards.[7]
- Clarify that NASD interpretations apply to comparable MSRB provisions, unless the MSRB specifically provides otherwise.
- Incorporate definitions of ''non-cash compensation,'' ''cash compensation'' and ''offeror'' based on language in NASD Rules 2710, 2820 and 2830, and expand the definition of offeror to include, with respect to securities held as assets underlying municipal fund securities, any person considered an offeror under relevant NASD rules.
- Treat non-cash sales incentives relating to municipal fund securities and other primary offerings of municipal securities (*i.e.*, bonds and notes) in a manner similar to NASD's treatment of non-cash sales incentives relating to mutual funds, variable contracts, and corporate debt and equity offerings, including, among other things, permitting gifts that do not exceed $100 per individual per year and are not preconditioned on achievement of a sales target; and permitting the giving and receipt of occasional gifts of meals or tickets to theatrical, sporting and other entertainment, but only if such occasional gifts are not preconditioned on achievement of a sales target.
- Limit the circumstances under which dealers or offerors may pay or reimburse costs of training or education, based on NASD rules, including ensuring that attendance at, and payment for, such meetings is not preconditioned on achievement of a sales target; reimbursement is not applied to expenses of associated persons' guests; and that such meetings are held at appropriate locations.[8]
- Require that non-cash compensation arrangements include the total production and equal weighting requirements under NASD rules, which are designed to ensure that the arrangement does not favor sales of one municipal security over another.[9]
- Amend the recordkeeping requirements in Rule G–8 to require that dealers maintain a record of non-cash compensation received in connection with a primary offering from the issuer or its advisers, the underwriter, or any of their affiliates, as well as records regarding any internal sales incentive program for municipal fund securities.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[10] which requires that the rules of the MSRB shall ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.''[11]

The MSRB believes that the proposed rule change is consistent with these provisions in that it would provide for consistent treatment across the securities markets regarding gifts, gratuities, non-cash compensation and sales incentives, thereby facilitating dealer understanding of, and compliance with, these requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In June 2004, the MSRB requested comment on draft amendments to Rule G–20, and the related recordkeeping provisions of Rule G–8, that would:

[4] Rule G–17 provides that ''In the conduct of its municipal securities activities, each broker, dealer and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.''

[5] MSRB Notice on ''Application of Fair Practice and Advertising Rules to Municipal Fund Securities,'' May 14, 2002, reprinted in the *MSRB Rule Book* (July 1, 2004) at page 151.

Municipal fund securities are municipal securities issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, as amended, would constitute an investment company within the meaning of that Act. The most common forms of municipal fund securities sold by dealers consist of interests in trusts established by states as qualified tuition programs under Section 529 of the Internal Revenue Code (''529 college savings plans''), and interests in local government investment pools.

[6] *Id.*

[7] The NASD language with respect to this exception from the $100 annual gift limitation appears in an interpretive letter relating to NASD Rule 3060. *See* interpretive letter, dated June 10, 1999, from R. Clark Hooper, Executive Vice President, NASD, to Henry H. Hopkins, Director, and Sarah McCafferty, Vice President, T. Rowe Price Investment Services, Inc.

- The existing Rule G–20 language relating to ''gifts of reminder advertising'' is retained in the proposed amendments without change even though such language does not exist under NASD rules.

[8] The proposed language in Rule G–20 that refers to ''a location at which a significant asset, if any, being financed or refinanced in the primary offering is located'' is based on language included in draft amendments to NASD Rule 2710 proposed for comment by NASD in Notice to Members 04–07 (February 3, 2004) (the ''NASD Corporate Financing Proposal'').

[9] These total production and equal weighting requirements currently are included in NASD Rules 2820 and 2830, and are included in draft amendments to Rule 2710 proposed for comment in the NASD Corporate Financing Proposal.

[10] 15 U.S.C. 78o–4(b)(2)(C).

[11] Id.

• Treat non-cash sales incentives relating to municipal fund securities and other primary offerings of municipal securities (*i.e.*, bonds and notes) in a manner similar to NASD's treatment of non-cash sales incentives relating to mutual funds and corporate debt and equity offerings.

• Modify the existing provision in MSRB Rule G–20 that permits occasional gifts of meals or sports and entertainment tickets, and sponsorship of business functions outside of the $100 per year limitation by requiring that dealer personnel host (accompany) such meals, entertainment and business functions.

• Amend the recordkeeping requirements in Rule G–8 to require that dealers maintain a record of non-cash compensation received in connection with a primary offering from the issuer or its advisers, the underwriter, or any of their affiliates, as well as records regarding any internal sales incentive program for municipal fund securities.[12]

In response to the draft amendments, the MSRB received comment letters from NASD, The Investment Company Institute (''ICI''), Morgan Keegan, and Bernardi Securities. Three of the commentators (NASD, ICI and Morgan Keegan) expressed general support for the draft amendments, and one commentator (Bernardi Securities) opposed one aspect of the draft amendments. Two of the commentators (NASD and ICI) suggested that the MSRB make certain revisions, discussed below.

The MSRB believes that a number of the commentators' concerns and suggestions have merit and, accordingly, revised the amendments to (1) incorporate NASD rule language where possible; (2) clarify that NASD interpretations would apply to comparable MSRB provisions, unless the MSRB specifically provides otherwise; and (3) expand the definition of offeror to include, with respect to securities held as assets underlying municipal fund securities, any person considered an offeror under relevant NASD rules.

Consistency between NASD and MSRB Rules. NASD and ICI supported the MSRB's proposal to make Rule G–20 consistent with NASD's rules. ICI stated that a ''uniform system of regulation between the MSRB and the NASD reduces the potential that persons subject to both regimes will face conflicting regulatory requirements and facilitates compliance efforts. Moreover, inasmuch as the NASD is charged with inspecting securities firms for compliance with the rules of the MSRB, providing uniformity between MSRB's rules and those of the NASD * * * should facilitate the NASD's ability to conduct such inspections.'' NASD suggested that the MSRB, ''whenever possible, use precisely the same language as Rule 2830, and clarify that * * * [NASD's] interpretation of that rule would similarly apply to the interpretation of the Rule G–20 amendments.''

The MSRB agrees that, whenever possible, incorporating identical language between comparable provisions of MSRB and NASD rules would facilitate dealer understanding of and compliance with such provisions, as well as facilitate the inspection and enforcement thereof. The MSRB has, therefore, incorporated NASD language in the proposed amendments to Rule G–20, including those provisions relating to the requirement that dealers host meals, tickets to events and the like; technical language on gifts that call into question the dealer's ethical standards; non-cash compensation arrangements, including payment or reimbursement for education and training meetings; and the definitions of ''non-cash compensation,'' ''cash compensation,'' and ''offeror.''

NASD interpretations. NASD asked the MSRB to clarify whether NASD's interpretation of the exception for training and education meetings, as set forth in its Summer 2000 Regulatory and Compliance Alert, would apply to the training and education meeting exception in the draft amendments.[13] The MSRB agrees that this interpretation should apply to the similar provisions of amended Rule G–20.

Moreover, the MSRB intends generally that the provisions of Rule G–20 be read consistently with the analogous NASD provisions, unless the MSRB specifically indicates otherwise. Thus, relevant NASD interpretations would be presumed to apply to the comparable MSRB provision, subject to the MSRB's right to make distinctions when necessary and appropriate in the context of municipal fund securities and other primary offerings of municipal securities.

Definition of ''offeror.'' NASD suggested that the draft definition of ''offeror,'' which includes the issuer's service providers in connection with the marketing and maintenance of its municipal fund securities, also should include the investment adviser to the underlying funds. Similarly, ICI recommended expanding the draft definition of ''offeror'' to include the issuer of any investment product into which the assets of a municipal fund security are invested, as well as any investment adviser, fund administrator, underwriter, or affiliated person of such entities with respect to such underlying investments. The MSRB agrees, and revised the proposed rule language to reflect this change, with minor adjustments to more fully conform to municipal fund securities and other primary offerings of municipal securities.

Applicability of basic gift limitation to municipal fund securities. ICI suggested that the MSRB limit the provisions that would be applicable to municipal fund securities to those set forth in draft subsection (d) of Rule G–20. ICI noted that the draft amendments would result in there being two provisions governing ''*de minimis*'' gifts, and two provisions governing gifts of meals or tickets. ICI stated that this is unnecessary and will create confusion. It recommended that subsections (a) and (b) be revised to exclude the offer and sale of municipal fund securities, and that such offers and sales be subject solely to subsection (d). The MSRB does not agree with this suggestion; the two provisions are intended to apply in different contexts. Rule G–20(a) applies to gifts and gratuities in relation to the municipal securities activities of the employer of the recipient. Rule G–20(d) applies to non-cash compensation in connection with the sale and distribution of a primary offering of municipal securities. The MSRB believes that both provisions are important and both should apply to municipal fund securities as well as to other primary offerings of municipal securities. The MSRB observes that dealers selling mutual fund shares also are currently subject to both NASD Rule 3060 and NASD Rule 2830(l)(5).

Records of de minimis gifts. ICI recommended that the MSRB revise the draft recordkeeping requirement in Rule G–8 regarding non-cash compensation to conform to NASD Rule 2830, on investment company securities. ICI stated that the NASD rule does not require dealers to keep records of *de minimis* gifts (*i.e.*, those under $100 per year) or occasional meals or tickets to theatrical and sporting events. ICI suggested that the MSRB similarly exclude these items from the recordkeeping requirements of Rule G–8 ''based on the conclusion that these *de minimis* items do not raise regulatory

[12] See ''Request for Comments on Draft Amendments to Rules G–20 and G–8 Relating to Gifts, Gratuities and Non-Cash Compensation in Municipal Debt Offerings and Sales of Municipal Fund Securities,'' MSRB Notice 2004–17 (June 15, 2004), at *http://www.msrb.org.*

[13] *See* NASD ''Regulatory & Compliance Alert'' (Summer 2000) at 13.

concerns and, therefore, the burden of making and keeping such records would exceed any benefits of requiring them.'' ICI further noted that this revision would provide uniformity between MSRB and NASD recordkeeping requirements. The MSRB does not agree with this recommendation. The provisions in NASD Rule 3060, on influencing or rewarding employees of others, require firms to keep a separate record of *all* payments or gratuities in any amount. The MSRB believes that a recordkeeping requirement for *de minimis* gifts is necessary for both the dealer and the appropriate regulatory agency to determine whether a rule violation has occurred.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–MSRB–2005–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–MSRB–2005–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2005–02 and should be submitted on or before September 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4621 Filed 8–23–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52289, File No. SR–MSRB–2005–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Month-End Performance Data for Municipal Fund Securities Under MSRB Rule G–21

August 18, 2005.

On June 2, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending MSRB Rule G–21, on advertising, to establish requirements relating to the availability of performance data current to the most recent month-end in connection with advertisements by brokers, dealers and municipal securities dealers containing performance data for municipal fund securities. The proposed rule change was published for comment in the **Federal Register** on July 11, 2005.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the proposed rule change.

The proposed rule change would amend Rule G–21 to require dealers to include in advertisements that contain performance data for municipal fund securities a phone number or Web address where investors may obtain performance data current to the most recent month-end, unless the data included in the advertisement is itself current to the most recent month-end. A full description of the proposal is contained in the Commission's Notice.[5] The MSRB proposes that dealers be required to comply with the proposed rule change for advertisements of municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005.[6]

ICI's Letter strongly supported the proposed amendments, which would bring advertising rules for municipal fund securities more in line with the requirements of Rule 482 adopted by the SEC under the Securities Act of 1933, as amended.[7] The ICI's Letter stated that greater uniformity with the advertising requirements applicable to mutual funds is appropriate because municipal fund securities and mutual funds share many common features, including the manner in which they are advertised to investors. The ICI's Letter also stated that uniform standards will facilitate the NASD's ability to conduct inspections because the NASD is charged with inspecting securities firms for compliance with both MSRB and SEC advertising rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[8] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51951 (June 30, 2005), 70 FR 39833 (July 11, 2005).

[4] *See* letter to Jonathan G. Katz, Secretary, Commission, from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (''ICI''), dated July 25, 2005 (''ICI's Letter'').

[5] *See supra* note 3.

[6] This effective date conforms to the effective date for other changes made to Rule G–21 earlier this year. *See* Exchange Act Release No. 51736 (May 24, 2005), 70 FR 31551 (June 1, 2005).

[7] 15 U.S.C. 77a *et seq.*

[8] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

regulations thereunder.[9] Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[10] In particular, the Commission finds that the proposed rule change will further investor protection by making information provided in advertisements of municipal fund securities more up-to-date and more comparable among different municipal fund securities investments and between municipal fund securities and registered mutual funds.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–MSRB–2005–09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4622 Filed 8–23–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52294; File No. SR–NASD–2004–025]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Amend NASD's Minor Rule Violation Plan

August 18, 2005.

On February 10, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its minor rule violation plan (''MRVP''). On March 17, 2005, NASD filed Amendment No. 1 to the proposed rule change. On June 27, 2005, NASD filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 14, 2005.[3] The Commission received two comments on the proposal.[4] This order approves the proposed rule change, as amended.

NASD proposed to make the following changes to its MRVP:

- Combine in one entry all rule violations eligible for disposition under the MRVP that relate to transaction reporting and audit trail requirements in equity and debt securities. Specifically, NASD proposes to eliminate the separate minor rule violation pertaining to NASD Rules 6130 and NASD 6170 (transaction reporting to the Automated Confirmation Transaction Service) and add them to a consolidated entry; add to the MRVP, and this consolidated entry, violations of NASD Rules 4632A, 5430, 6130A, and 6170A, which relate to TRACS requirements; and eliminate the reference in the MRVP to a violation of the Fixed Income Pricing System, NASD Rule 6240, and replace it with a violation of NASD Rule 6230, the TRACE transaction reporting rule.
- Include in the MRVP violations of standards applicable to member communications with the public (NASD Rules 2210, 2211, and 2220, and related Interpretive Materials) which would allow NASD to address minor or technical violations of content-related advertising rules.
- Expand the MRVP to include a member's failure to identify to NASD and keep current information regarding any contact person that a member must provide to NASD under any current or future NASD rule.
- Change ''the Association'' to ''NASD'' in the minor rule violation provision relating to NASD Rule 3110 and change ''ECN's'' to ''ECNs'' in the minor rule violation provision relating to Rule 11Ac1–1(c)(5) under the Act.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act,[6] which requires that the rules of an association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 15A(b)(2) and 15A(b)(7) of the Act[7] which require that the rules of an association enforce compliance and provide appropriate discipline for violations of Commission and association rules. In addition, because existing NASD Rule 9216(b) provides procedural rights to a person fined under the MRVP to contest the fine and permits a hearing on the matter, the Commission believes the MRVP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 15A(b)(8) and 15A(h)(1) of the Act.[8]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[9] which governs minor rule violation plans. The Commission believes that the change to its MRVP will strengthen NASD's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with NASD rules and all other rules subject to the imposition of fines under NASD's MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, an MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NASD will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of

[9] 15 U.S.C. 78o–4(b)(2)(C).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51994 (July 7, 2005), 70 FR 40764.

[4] *See* e-mails to *rule-comments@sec.gov* from Scott Lynn Fagin, Chief Compliance Officer and Chief Financial Officer, The Jeffrey Matthews Financial Group, LLC, dated August 5, 2005; and Joseph W. Mays, Jr., President, Securities Consulting Group, Inc., dated August 1, 2005. The comments are not germane to the proposal and thus do not raise any issue that would preclude approval of this proposal.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78o–3(b)(2) and 78o–3(b)(7).

[8] 15 U.S.C. 78o–3(b)(8) and 78o–3(h)(1).

[9] 17 CFR 240.19d–1(c)(2).

more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[10] and Rule 19d–1(c)(2) under the Act,[11] that the proposed rule change (SR–NASD–2004–025), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4625 Filed 8–23–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52291; File No. SR–NASD–2005–011]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To Limit the Eligibility for Quotation on the OTCBB of the Securities of an Issuer That Is Repeatedly Delinquent In Its Periodic Reporting Obligations

August 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted Amendment No. 1 to this filing on May 10, 2005.[3] Nasdaq submitted Amendment No. 2 to this filing on June 24, 2005.[4] Nasdaq submitted Amendment No. 3 to this filing on August 15, 2005.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to limit the eligibility for quotation on the Over-the-Counter Bulletin Board (''OTCBB'') of the securities of an issuer that is repeatedly late in filing required periodic reports. Nasdaq proposes to implement the proposed rule in connection with filings for reporting periods ending on or after October 1, 2005.[6]

The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*, deletions are in [brackets].

* * * * *

6530. OTCBB-Eligible Securities

A member shall be permitted to quote the following categories of securities in the Service:

(a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:

(1)–(3) No change.

(4) the issuer of the security is a bank or savings association (*or a holding company for such an entity*) that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b)–(d) No change.

(e) [Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.] *Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:*

(1) while quoted on the OTCBB, the issuer of the security has failed to file a complete required annual or quarterly report by the due date for such report (including, if applicable, any extensions permitted by SEC Rule 12b–25) three times in the prior two-year period; or

(2) the security has been removed from the OTCBB due to the issuer's failure to satisfy paragraph (a)(2), (3) or (4), above, two times in the prior two-year period.

Following the removal of an issuer's securities pursuant to this paragraph (e), such securities shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year period. For purposes of this paragraph, a report filed within any applicable extensions permitted by SEC Rule 12b–25 will be considered timely filed. Furthermore, filings for reporting periods ending before October 1, 2005 will not be considered for purposes of this paragraph (e).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In January of 1999, the Commission approved amendments to NASD Rules 6530 and 6540 requiring all issuers of securities quoted on the OTCBB to be current in their filings with the Commission or other appropriate

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 240.19d–1(c)(2).

[12] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaced the original filing in its entirety, clarified the proposed rule text in response to comments received from the Commission staff, clarified how Nasdaq will notify issuers about the proposed rule, and stated that the proposed rule would be implemented for those filings for periods ending on or after June 1, 2005.

[4] Amendment No. 2, which replaced the original filing and Amendment No. 1 in their entirety, further clarified the proposed rule text in response to comments received from the Commission staff, and set forth in the proposed rule text that filings for reporting periods ending before June 1, 2005 will not be considered under the proposed rule change.

[5] Amendment No. 3, which supplemented the filing as modified by Amendment No. 2, amended the proposed rule text to provide that filings for reporting periods ending before October 1, 2005 will not be considered under the proposed rule change.

[6] The Commission notes that the NASD has submitted a proposed rule change (SR–NASD–2005–089), which was published for public comment in the **Federal Register** on July 29, 2005, that would amend the NASD's Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries (''Delegation Plan'') and amend several NASD rules with respect to the OTCBB. Currently, the Delegation Plan allocates responsibility for activities related to or in support of the trading in over-the-counter (''OTC'') equity securities, including the OTCBB, to Nasdaq. Under the NASD's proposal, the NASD would assume direct authority for OTC equity securities, rather than delegate it to Nasdaq. Nasdaq would, however, continue to provide certain operational systems and support to the OTCBB pursuant to contract. *See* Securities Exchange Act No. 52119 (July 25, 2005), 70 FR 43918 (July 29, 2005) (public notice of File No. SR–NASD–2005–089).

regulator (the ''Eligibility Rule'').[7] When a security becomes ineligible for quoting on the OTCBB due to the Eligibility Rule, either because a filing is not made or because a filing is incomplete,[8] Nasdaq appends an additional character ''E'' designator to the security's symbol.[9] This identifier notifies investors and other market participants that the issuer is not current in its reporting obligations. If the issuer does not comply within the applicable grace period provided by the Eligibility Rule (typically 30 days),[10] Nasdaq removes the issuer's securities from quotation on the OTCBB. Approximately 80% of issuers achieve compliance within the grace period, while 20% are removed.

Nasdaq reports that it has identified a high level of non-compliance with the Eligibility Rule. Specifically, over the two-year period ended August 31, 2004, Nasdaq identified over 3,000 instances of delinquent or otherwise incomplete filings by 1,806 OTCBB issuers, of which 1,067 were still quoted as of August 31, 2004. Of the 1,806 issuers, 1,035 were late in filing one time, 548 issuers were delinquent twice and 223 were delinquent three or more times. Given this high rate of recidivism, Nasdaq proposes to make certain securities ineligible for quotation on the OTCBB for a period of one year.

First, Nasdaq proposes to make the securities of those OTCBB issuers that are delinquent in a required filing three times in a two-year period ineligible for quotation on the OTCBB for a period of one year.[11] Accordingly, the securities of a company would be removed from the OTCBB the third time that the company does not file by the due date (including, if applicable, any extensions permitted by Rule 12b–25 under the Act) in a two-year period, without the benefit of any grace period for this third delinquency.[12] In applying the look-back associated with this provision, Nasdaq would consider reports characterized by due dates (including, if applicable, any extensions permitted by Rule 12b–25 under the Act) that fell within the prior two-year period.

Second, Nasdaq also proposes to make the securities of those OTCBB issuers whose securities are removed from the OTCBB for failure to file two times in a two-year period ineligible for quotation on the OTCBB for a period of one year.[13] The heightened test for this category reflects the greater length of the filing delinquencies, *i.e.*, these issuers were unable to regain compliance, even within the applicable ''grace'' period. In applying the look-back associated with this provision, Nasdaq would consider the date the security is removed, without regard to when the delinquent reports were actually due.

Under the proposed rule change, as amended, only filings for which the grace period ends while the issuer is quoted on the OTCBB would be considered.[14] Following its removal for violating one of the proposed requirements, a security would not be eligible for re-inclusion unless the issuer has timely filed in a complete form all required annual and quarterly reports for a period of one year. Thus, the securities of an issuer could not be re-included for a minimum of one year and the securities of, for example, most domestic issuers would not be eligible for re-inclusion until the issuer has timely filed at least one Form 10–K and three Forms 10–Q. Under the proposed rule change, as amended, while a late filing during the period when an issuer is ineligible would reset the ineligibility period, once an issuer that is removed for violating one of the proposed requirements is re-included, Nasdaq would not consider late filings due prior to the date of re-inclusion under the proposed rule.[15]

Nasdaq proposes to implement the proposed rule in connection with filings for periods ending on or after October 1, 2005.[16] Filings for periods ending before October 1, 2005 would not be considered in determining the number of times a company has made late filings. Upon implementation, a company would be provided notification whenever Nasdaq determines that it is late in a periodic filing. Such notice would explain the effect of such a late filing under the proposed rule. Nasdaq would also provide information about the proposed rule on the issuer section of the OTCBB Web site, at *http://www.otcbb.com*.

Finally, Nasdaq proposes to clarify its current position that the 60-day grace period applicable to banks and savings associations also applies to holding companies for such entities. Nasdaq believes that this clarification is appropriate because, like banks and savings associations, these holding companies must also file publicly available periodic reports with the appropriate state or federal regulator.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[17] in general, and with Section

[7] *See* Securities Exchange Act Release No. 40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (SR–NASD–98–51). These amendments were fully implemented for all securities quoted on the OTCBB as of June 2000.

[8] In order for a filing to be complete, it must, for example, contain all required certifications, attestations, and financial statements, including an auditor's review pursuant to SAS–100 (for quarterly reports) or an unqualified auditor's opinion (for annual reports). *See, e.g.*, Rule 13a–14 under the Act, 17 CFR 240.13a–14, and Rules 10–01(d) and 2–02(c) of Regulation S–X, 17 CFR 210.10–01(d) and 2–02(c). In addition, the auditor must be registered with the Public Company Accounting Oversight Board. *See* Section 102(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7212(a).

[9] Nasdaq also appends an ''E'' to a security's symbol when it fails to receive notice that an issuer, which files with a regulator other than the Commission, has timely filed. In the case of those issuers, the Nasdaq generally receives notice of a regulatory filing from the applicable market maker or the issuer itself, and will investigate any instance where it has not received such notice. *See* Telephone conversation between Tim Fox, Attorney, Commission, and Arnold Golub, Associate Vice President, Nasdaq on May 20, 2005.

[10] The Eligibility Rule provides a 60-day grace period to banks, savings association and insurance companies that do not file with the Commission, but are required to file with other regulators. *See* NASD Rule 6530(a)(3) and (4).

[11] A filing would not be considered delinquent if made within any applicable extensions permitted pursuant to Rule 12b–25 under the Act. Nasdaq also appends an ''E'' to a security's symbol when it does not receive notice that an issuer that files with a regulator other than the Commission has timely filed. Nasdaq will not consider such occurrences to be a delinquent filing for purposes of the proposed rule if the issuer did, in fact, timely file with the appropriate regulator. Nonetheless, these issuers can help alleviate confusion by providing Nasdaq with a copy of the filing made with the appropriate regulator on or before its due date.

[12] Prior to such removal, Nasdaq intends to provide issuers with 7 calendar days to request review of the determination by a hearings panel. See File No. SR–NASD–2005–067, which proposes to clarify the availability of a process to review eligibility determinations under NASD Rule 6530. This filing, which has not yet been published by the Commission for public comment, is available on Nasdaq's Web site at *http://www.nasdaq.com*.

[13] An issuer that is not removed because it files a late report after requesting a hearing pursuant to the NASD Rule 9700 Series but before a decision has been issued in the matter would not be considered to have failed to file pursuant to proposed NASD Rule 6530(e)(2), but it would still be considered to have filed late for purposes of proposed NASD Rule 6530(e)(1).

[14] Thus, for example, an OTCBB-quoted issuer that has no prior late filings fails to file its Form 10–K for the period ended December 31, 2005, prior to the end of the applicable grace period. The issuer is removed from the OTCBB under existing NASD Rule 6530(a)(2), and thereafter also files its Form 10–Q for the period ended March 31, 2006, after the due date. The issuer is subsequently re-included on the OTCBB. Only the late filing for the period ended December 31, 2005, would count for purposes of the proposed rule change because the issuer was not quoted on the OTCBB when the grace period for the March 31, 2006 filing expired. *See* Telephone conversation between Tim Fox, Attorney, Division of Market Regulation, Commission, and Arnold Golub, Associate Vice President, Nasdaq, on August 17, 2005.

[15] *See* Telephone conversation between Tim Fox, Attorney, Division of Market Regulation, Commission, and Arnold Golub, Associate Vice President, Nasdaq, on August 17, 2005.

[16] *See* Amendment No. 3.

[17] 15 U.S.C. 78*o*–3.

15A(b)(6) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq represents that the proposed rule change, as amended, is designed to increase the quality and timeliness of disclosure available to investors by OTCBB issuers and to prevent the securities of issuers that repeatedly fail to timely comply with their obligations under the securities laws from being quoted on the OTCBB.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by Nasdaq.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-NASD-2005-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–011 and should be submitted on or before September 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4627 Filed 8–23–05; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Premium War Risk Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Determination to allow for the provision of FAA Aviation Insurance.

SUMMARY: This notice contains the text of a memorandum from the Secretary of Transportation to the Administrator of the Federal Aviation Administration regarding the Provision of Aviation Insurance Coverage for U.S. Flag Commercial Air Carrier Service in Domestic and International Operations.

DATES: Dates of extension from August 31, 2005 through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, AEP–20, 202–267–9943 or Eric Nelson, Program Analyst, AEP–20, 202–267–3090. Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: On August 16, 2005, the Secretary of Transportation authorized the provision of aviation insurance by the Federal Aviation Administration for 122 days as follows:

MEMORANDUM FOR THE ADMINISTRATOR

Pursuant to the authority delegated to me by the President in Presidential Determination 2005–15 of December 21, 2004, I hereby make the determination and finding set forth in that Determination and extend the determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. flag commercial air carrier service in domestic and international operations through December 31, 2005.

Pursuant to section 44306(c) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from August 31, 2005, through December 31, 2005.

/s/ Normal Y. Mineta

Affected Public: Air Carriers who currently have premium war risk insurance with the Federal Aviation Administration.

Issued in Washington, DC on August 17, 2005.

John M. Rodgers,

Director, Aviation Insurance Program Office.

[FR Doc. 05–16790 Filed 8–23–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss rotorcraft issues.

DATES: The meeting is scheduled for Thursday, September 8, 2005, at 2 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held at two locations. The first location will be at the FAA, 800 Independence Avenue, SW., Conference Room 810, Washington, DC 20591. The second location will be at the FAA Rotorcraft Directorate, 2601 Meacham Blvd., Don P. Watson Conference Room, 4th Floor, Fort Worth, Texas, 76137.

FOR FURTHER INFORMATION CONTACT: Caren Waddell, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8199, or e-mail *caren.waddell@faa.gov*.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II).

The agenda will include:

- Opening Remarks
- Discussion and approval of the proposed ''Fatigue Tolerance Evaluation of Metallic Structure'' Advisory Circular material package.
- Working Group Status Report—Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure.
- FAA Status Report—Performance and Handling Qualities Requirements for Rotorcraft, Notice of Proposed Rulemaking.
- Other Business
- Future Meetings

Attendance is open to the interested public but will be limited to the space available. Persons participating by telephone can call (817) 222–4871, the pass code is 5359#. Anyone participating by telephone will be responsible for paying long-distance charges.

The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be approved may be made available by contacting Kathy L. Jones, FAA, at telephone (817) 222–5359 or e-mail *Kathy.L.Jones@faa.gov*.

If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on August 22, 2005.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 05–16946 Filed 8–22–05; 2:20 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of a public meeting of the President's Advisory Panel on Federal Tax Reform.

DATES: The meeting will be held on Thursday, September 8, 2005, in the Washington, DC area and will begin at 9 a.m.

ADDRESSES: The venue has not been identified to date. Venue information will be posted on the Panel's Web site at *http://www.taxreformpanel.gov* as soon as it is available.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov*.

SUPPLEMENTARY INFORMATION: *Purpose:* The September 8 meeting is the eleventh meeting of the Advisory Panel. At this meeting, the Panel will continue to discuss issues associated with reform of the tax code.

Comments: Interested parties are invited to attend the meeting; however, no public comments will be heard at the meeting. Any written comments with respect to this meeting may be mailed to The President's Advisory Panel on Federal Tax Reform, 1440 New York Avenue NW., Suite 2100, Washington, DC 20220. All written comments will be made available to the public.

Records: Records are being kept of Advisory Panel proceedings and will be available at the Internal Revenue Service's FOIA Reading Room at 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20024. The Reading Room is open to the public from 9 a.m. to 4 p.m., Monday through Friday except holidays. The public entrance to the reading room is on Pennsylvania Avenue between 10th and 12th streets. The phone number is (202) 622–5164 (not a toll-free number). Advisory Panel documents, including meeting announcements, agendas, and minutes, will also be available on *http://www.taxreformpanel.gov*.

Dated: August 22, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–16945 Filed 8–23–05; 8:45 am]

BILLING CODE 4811–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, September, 15, 2005.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, September 15, 2005 from 8 a.m. Pacific Time to 9:30 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: August 18, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–4629 Filed 8–23–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Savings and Loan Holding Company Registration Statement—H–(b)10

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before September 23, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Savings and Loan Holding Company Registration Statement—H–(b)10.

OMB Number: 1550–0020.

Form Number: H–(b)10.

Regulation Requirement: 12 CFR 584.1.

Description: This information collection is used to determine a savings and loan holding company's adherence to the statutes, regulations, and conditions of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings association.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 123.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 8 hours.

Estimated Total Burden: 984 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: August 12, 2005.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 05–16780 Filed 8–23–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, Veterans Affairs.

ACTION: Notice of Government Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or Cooperative Research and Development Agreements (CRADA) Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Saleem J. Sheredos, Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 410–962–2141; e-mail at: *saleem@vard.org.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

U.S. Provisional Patent Application No. 60/672,852 ''Wireless Health Manager.''

Dated: August 11, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E5–4615 Filed 8–23–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, Department of Veterans Affairs.

ACTION: Notice of Government Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Saleem J. Sheredos, Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 410–962–

2141; e-mail at: *saleem@vard.org.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

U.S. Provisional Patent Application No. 60/672,062 ''Improvement in Endoscope Design to Facilitate Placement and Patient Comfort.''

Dated: August 10, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E5–4616 Filed 8–23–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Construction Advisory Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Construction Advisory Board will be held on September 28–29, 2005 in Room 930 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. The meeting is open to the public, except for a two hour portion during the morning of September 29, 2005.

The purpose of the Board is to provide advice to the Secretary of the Department of Veterans Affairs regarding VA construction. The Board will make recommendations to the Secretary on the nature and scope of the Department's construction processes.

The meeting will begin with a session on September 28 from 1 p.m. until 5 p.m. At that time, the Board will receive briefings from three working groups regarding their site visits in August 2005 and receive oral presentations from the public. On September 29 from 10 a.m. until 12 noon the Board will discuss personnel matters. To protect personal privacy and in accordance with 5 U.S.C. 552b(c)(6), this portion of the meeting will be closed. On the afternoon of September 29, the Board will discuss additional areas of study and set the date for its next meeting.

Members of the public may direct questions or submit written statements for review by the Board in advance of the meeting. Any member of the public wishing to make a brief oral presentation or to attend the meeting should contact Doug Belling, Designated Federal Officer, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–6675.

Dated: August 16, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–16760 Filed 8–23–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting Amendment

The Department of Veterans Affairs (VA) gives notice under Public Law 92–4463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has changed the location of its meeting scheduled on August 26, 2005, to the Hamilton Crowne Plaza Hotel, Hamilton Ballroom on the lower level, 1001 14th Street, NW., Washington, DC 20005. The meeting will not be held at the Shriners Almas Temple (adjacent to the Hamilton Crowne Plaza Hotel), 1315 K Street, NW., Washington, DC 20005. The meeting will begin at 8:30 a.m. and conclude at 4:30 p.m. and is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

On August 26, 2005, the Commission will engage in panel discussions with current and former employees of the Department of Veterans Affairs, the Department of Defense, and the House Committees on Armed Services and Veterans' Affairs with knowledge and expertise in programs to assist and compensate disabled retirees and veterans and their survivors. The agenda will also include briefings by the Department of Veterans Affairs and the Department of Defense to provide the Commission with an understanding of programs to intervene, diagnose, treat, and assess post-traumatic stress disorder (PTSD).

Interested persons may attend and present oral statements to the Commission. Interested parties may provide written comments for review by the Commission at any time to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004, or by e-mail at *vetscommission@va.gov.* Information on the Commission may be found at *http://www.va.gov/vetscommission.*

Dated: August 18, 2005.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–16759 Filed 8–23–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
August 24, 2005

Part II

Environmental Protection Agency

40 CFR Part 51, et al.

Rulemaking on Section 126 Petition From North Carolina To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 72, 73, 74, 78, 96, and 97

[OAR–2004–0076; FRL–7948–3]

RIN 2060–AM99

Rulemaking on Section 126 Petition From North Carolina To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: Today, EPA is proposing actions to address the interstate transport of emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) that contribute significantly to nonattainment and maintenance problems with respect to the national ambient air quality standards (NAAQS) for fine particulate matter ($PM_{2.5}$) and 8-hour ozone. As one part of today's action, EPA is proposing its response to a petition submitted to EPA by the State of North Carolina under section 126 of the Clean Air Act (CAA). The petition requests that EPA find that SO_2 and/or NO_X emissions from electric generating units (EGUs) in 13 States are significantly contributing to $PM_{2.5}$ and/or 8-hour ozone nonattainment and maintenance problems in North Carolina, and requests that EPA establish control requirements to prohibit such significant contribution. The EPA's proposed response is based on extensive analyses conducted for the recently issued Clean Air Interstate Rule (CAIR). The EPA is proposing to deny the petition for sources in States not shown to be linked to nonattainment and maintenance problems in North Carolina under the CAIR. For sources in States that are linked to North Carolina under the CAIR, EPA is proposing in the alternative to deny the petition if EPA promulgates Federal implementation plans (FIPs) to address the interstate transport no later than the final section 126 response or to grant the petition if EPA does not promulgate the FIPs prior to or concurrently with the section 126 response. The EPA's preferred option is to promulgate the FIP concurrently with the final section 126 response.

In today's action, EPA is also proposing FIPs for all jurisdictions that are covered by the CAIR. The FIPs would regulate EGUs in the affected States and achieve the emissions reductions requirements established by the CAIR until States have approved State implementation plans (SIPs) to achieve the reductions. The EPA intends the FIP to satisfy the concerns cited in the section 126 petition and provide a Federal backstop for the CAIR. In no way should the FIP for CAIR be viewed as a sign of any concern about States meeting the SIP responsibilities under CAIR.

As the control requirements for both the section 126 action and the FIP, EPA is proposing Federal NO_X and SO_2 trading programs that provide emissions reductions equal to those required under the CAIR in affected States.

The Section 126 and FIP actions would not constrain States in their selection of control strategies to meet the CAIR. The EPA intends to withdraw section 126 or FIP requirements in a State if that State submits and EPA approves a SIP meeting the requirements of CAIR.

Today's action also proposes revisions to the CAIR in order to address the interaction between the EPA-administered Federal CAIR trading programs proposed today and the EPA-administered State CAIR trading programs that will be created by any State that elects to submit a SIP establishing such a trading program to meet the requirements of the CAIR. In addition, EPA is proposing revisions to the CAIR to correct certain minor errors.

Today's action also proposes revisions to the Acid Rain Program in order to make the administrative appeals procedures, which currently apply to final determinations by the Administrator under the EPA-administered State CAIR trading programs, also apply to the EPA-administered trading programs under the section 126 and FIP actions. In addition, we are proposing certain minor revisions to the Acid Rain Program that would apply to all affected units.

DATES: Comments must be received on or before October 24, 2005. Public hearings will be held on September 15, 2005 in Washington, DC and on September 14, 2005 in Research Triangle Park, North Carolina. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearings.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0076, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-Docket@epa.gov*.
- Mail: Air Docket, Attention: Docket No. OAR–2004–0076, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No.: OAR–2004–0076. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to the

SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning today's section 126 action, please contact Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–3347, e-mail at *oldham.carla@epa.gov.* For general questions concerning today's FIP action, please contact Tom Coda, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–3037, e-mail at *coda.tom@epa.gov.* For legal questions concerning the section 126 action, please contact Steven Silverman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–5523, e-mail at *silverman.steven@epa.gov.* For legal questions concerning the FIP action, please contact Sonja Petersen, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 564–4097, e-mail at *petersen.sonja@epa.gov.* For questions regarding the cap and trade programs and emissions budgets, please contact Meg Victor, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 343–9193, e-mail at *victor.meg@epa.gov.* For questions regarding the revisions to the CAIR and Acid Rain Programs, please contact Dwight Alpern, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 343–9151, e-mail at *alpern.dwight@epa.gov.* For questions regarding analyses required by statutes and executive orders, please contact Ron Evans, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C339–01, Research Triangle Park, NC, 27711, telephone (919) 541–5488, e-mail at *evans.ron@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

Categories and entities potentially regulated by this action 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 this action. To determine whether your facility could potentially be affected by this action, you should examine the definitions and applicability criteria in §§ 72.2, 72.6, 72.7, 72.8, and 74.2 for purposes of the Acid Rain Program revisions and proposed §§ 97.102, 97.104, 97.105, 97.202, 97.204, 97.205, 97.302, 97.304, and 97.305 for purposes of the section 126 and FIP actions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section under **FOR FURTHER INFORMATION CONTACT**.

II. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit comments that include CBI to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, e-mail at *morales.roberto@epa.gov*, Attention Docket ID No. OAR–2004–0076.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

III. Availability of Related Information

The EPA has conducted a separate rulemaking that contains actions and information related to this proposal, ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)'' (see proposal at 69 FR 4566, January 30, 2004; supplemental proposal at 69 FR 32684, June 10, 2004; notice of data availability at 69 FR 47828, August 6, 2004; and final rule at 70 FR 25162; May 12, 2005). Documents related to the CAIR are available for inspection in docket OAR–2003–0053 at the address and times given above. The EPA has established a Web site for the CAIR at *http://www.epa.gov/cleanairinterstaterule* or more simply *http://www.epa.gov/cair/* which will also include information on the section 126 rulemaking actions. The rulemaking docket for the CAIR contains information and analyses that are relied upon in today's proposed actions. Therefore, EPA is including by reference the entire CAIR record for purposes of the section 126 and FIP rulemakings. The EPA is not accepting comment on the CAIR or otherwise reopening any issue decided in the CAIR for reconsideration or comment, except that we are taking comment specifically on the revisions to CAIR that EPA is proposing in today's action. Section VII in this preamble discusses the proposed changes to CAIR.

IV. Public Hearing

The EPA will be holding two public hearings on today's proposal. On September 14, 2005, a public hearing will be held at the EPA, Building C, Room C111A–B, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. On September 15, 2005, a public hearing will be held at EPA Headquarters, 1200 Pennsylvania Ave, NW., Room 1117 (EPA East), Washington, DC. The metro stop is Federal Triangle. Because these hearings are being held at U.S. government facilities, everyone planning to attend one of the hearings should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room.

The public hearings will begin at 9 a.m. and continue until 5 p.m., if necessary, depending on the number of speakers. The EPA may end the hearing early if all registered speakers have had an opportunity to speak, but no earlier than 2 p.m. Persons wishing to present oral testimony that have not made arrangements in advance should register by 2 p.m. the day of the hearing. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD–ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket. If you would like to present oral testimony at the hearing, please notify Joann Allman, U.S. EPA, Office of Air Quality Planning and Standards, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail *allman.joann@epa.gov*, by September 8, 2005. For updates and additional information on the public hearings, please check EPA's Web site for this rulemaking at *http://www.epa.gov/cair*.

The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

Outline

I. Background and Summary of Proposal

A. Summary of Proposal

Today, EPA is proposing two actions to address the interstate transport of emissions of NO_X and SO_2 that contribute significantly to nonattainment and maintenance problems with respect to the NAAQS for $PM_{2.5}$ and 8-hour ozone. First, EPA is proposing its response to a petition submitted to EPA by the State of North Carolina under section 126 of the CAA. The petition requests that EPA establish control requirements for EGUs in 13 States based on findings that these sources are significantly contributing to $PM_{2.5}$ and/or 8-hour ozone nonattainment and maintenance problems in North Carolina. (See Petition, Docket No. OAR–2004–0076–0002.)

The EPA's proposed response is based on extensive analyses conducted for the CAIR (70 FR 25162; May 12, 2005). The EPA is proposing to deny the petition for sources in States not shown in the CAIR to be linked to (that is, to significantly contribute to) nonattainment and maintenance problems in North Carolina. For sources in States that are linked to North Carolina under the CAIR for the $PM_{2.5}$ NAAQS, EPA is proposing in the alternative (1) to deny the petition in the event that EPA promulgates FIPs no later than the final section 126 response to address the interstate transport or (2) to grant the petition if EPA does not promulgate a FIP prior to or concurrently with the section 126 response. The EPA's preferred approach is to promulgate the FIP concurrently with the final section 126 response and deny the petition. The FIP would control the significant transport from sources in States named in the petition as well as from sources in the other CAIR States, in the event that the States do not have approved SIPs meeting the CAIR requirements. The States named in the petition with respect to the $PM_{2.5}$ NAAQS are: Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. Of these, Illinois and Michigan are not linked to North Carolina in the final CAIR. The EPA is proposing to deny the petition with respect to the 8-hour ozone NAAQS, because there are no States linked to North Carolina under the CAIR for that NAAQS. The States named in the petition with respect to the 8-hour ozone NAAQS are: Georgia, Maryland, South Carolina, Tennessee, and Virginia.

In today's action, EPA is also proposing FIPs to address interstate transport of NO_X and SO_2 under section 110(a)(2)(D) for all jurisdictions that are covered by the CAIR. In the CAIR, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment of the NAAQS for $PM_{2.5}$ and/or 8-hour ozone in downwind States. The CAIR explains EPA's basis for determining significant contribution to downwind nonattainment and maintenance problems. In that rule, the EPA required the affected upwind States to revise their SIPs to include control measures to reduce emissions of SO_2 and/or NO_X. Sulfur dioxide is a precursor to $PM_{2.5}$ formation, and NO_X is a precursor to both ozone and $PM_{2.5}$ formation.

In an action published on the same day as the final CAIR, EPA proposed to find that Delaware and New Jersey contribute significantly to $PM_{2.5}$ nonattainment and maintenance problems in downwind States considering these States as a single entity (70 FR 25408; May 12, 2005). These States were included in the final CAIR only with respect to their impacts on downwind 8-hour ozone problems. Today's FIP proposal includes emissions reductions requirements for Delaware and New Jersey that would address their significant contribution to nonattainment or maintenance problems for the $PM_{2.5}$ NAAQS if EPA ultimately finds that these States significantly contribute to $PM_{2.5}$ problems in downwind States based on the approach in the proposed rule cited above.

The FIPs would regulate EGUs in the affected States and achieve the emissions reductions required by the CAIR until States have approved SIPs to achieve the reductions. The CAIR emissions budgets were based on control requirements that are highly cost effective for EGUs.

The EPA intends the CAIR FIPs to satisfy the concerns cited in the section 126 petition and to provide a Federal backstop for CAIR. In no way should the FIPs for CAIR be viewed as a sign of any concern about States meeting the SIP responsibilities under CAIR. There are no sanctions associated with these FIPs and EPA does not intend CAIR FIPs to have any other negative consequences for the affected States. The EPA is proposing FIP approaches that are flexible and intended to provide States options for getting their SIPs in place.

As the control remedy for both the section 126 action (should EPA make positive findings under section 126(b)) and the FIP, EPA is proposing Federal NO_X and SO_2 cap and trade programs that provide the emissions reductions required by the CAIR. The trading programs are designed after the model cap and trade programs that EPA provided as a control option for States to meet the CAIR. The EPA intends to integrate the Federal trading programs with the EPA-administered State CAIR trading programs that are based on the model rules so that sources could trade with one another under the respective emissions caps.

The EPA emphasizes that the section 126 response and FIP would not limit the options available to States to meet the requirements of the CAIR. We do not intend to record NO_X allocations in sources' allowance accounts (or take any other steps to implement the section 126 or FIP requirements that could impact a State's ability to regulate their sources in a different manner) until more than a year after the CAIR SIP submission deadline.[1] This would allow EPA time

[1] The CAIR requires affected sources to begin monitoring one year before the initial control periods (*i.e.*, sources begin monitoring in 2008 for the NO_X programs and begin monitoring in 2009 for the SO_2 program). Note that EPA would take any necessary actions to implement the monitoring provisions of the proposed Federal trading rules in time for monitoring to begin in 2008. To the extent that a State chooses to control EGUs to meet its CAIR obligations, the monitoring requirements

Continued

to take rulemaking action to approve timely SIPs and, thus, the FIP or section 126 requirements would not go into place. In addition, States could replace the FIP or section 126 requirements at a later time.

In today's action, EPA is also proposing revisions to the CAIR in order to address the interaction of EPA-administered NO_X and SO_2 trading programs under the CAIR and under the section 126 and FIP actions. In addition, EPA is proposing some revisions to the CAIR in order to correct certain minor errors.

The EPA is also proposing revisions to the Acid Rain Program in order to make the administrative appeals procedures (in 40 CFR part 78), which currently apply to final determinations by the Administrator under the EPA-administered States CAIR trading programs, also apply to the EPA-administered trading programs under the section 126 and FIP actions. In addition, EPA is proposing some minor revisions that would apply to all affected units under the Acid Rain Program.

For purposes of the section 126 and FIP rulemakings, the EPA is not accepting comment on the CAIR or otherwise reopening any issue decided in the CAIR for reconsideration or comment, except that we are taking comment specifically on revisions to the CAIR that EPA is proposing in today's action. Section VII of this preamble discusses the proposed changes to the CAIR.

B. General Background on $PM_{2.5}$ and Ozone

1. The $PM_{2.5}$ Problem

In an action published on July 18, 1997, we revised the NAAQS for particulate matter (PM) to add new standards for fine particles, using as the indicator particles with aerodynamic diameters smaller than a nominal 2.5 micrometers, termed $PM_{2.5}$ (62 FR 38652). We established health- and welfare-based (primary and secondary) annual and 24-hour standards for $PM_{2.5}$. The annual standard is 15 micrograms per cubic meter, based on the 3-year average of annual mean $PM_{2.5}$ concentrations. The 24-hour standard is 65 micrograms per cubic meter, based on the 3-year average of the annual 98th percentile of 24-hour concentrations. The annual standard is generally considered the more limiting.

Fine particles are associated with a number of serious health effects including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. (See EPA, Air Quality Criteria for Particulate Matter (EPA/600/P–99/002bF, October 2004) at 9.2.2.3). The EPA has estimated that attainment of the $PM_{2.5}$ standards would prolong tens of thousands of lives and would prevent, each year, tens of thousands of hospital admissions as well as hundreds of thousands of doctor visits, absences from work and school, and respiratory illnesses in children.

Individuals particularly sensitive to fine particle exposure include older adults, people with heart and lung disease, and children. More detailed information on health effects of fine particles can be found on EPA's Web site at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.htm1*.

The secondary or welfare-based $PM_{2.5}$ standards are designed to protect against major environmental effects caused by PM such as visibility impairment—including in Class I areas which include national parks and wilderness areas across the country—soiling, and materials damage.

As discussed in other sections of this preamble, SO_2 and NO_X emissions both contribute to fine particle concentrations. In addition, NO_X emissions contribute to ozone concentrations, described in the next section.

The $PM_{2.5}$ ambient air quality monitoring for the 2001–2003 period shows that areas violating the standards are located across much of the eastern half of the United States and in parts of California and Montana. The EPA published the $PM_{2.5}$ attainment and nonattainment designations on January 5, 2005 (70 FR 944).

2. The 8-Hour Ozone Problem

In an action published on July 18, 1997, we promulgated identical revised primary and secondary ozone standards that specified an 8-hour ozone standard of 0.08 parts per million (ppm). Specifically, under the standards, the 3-year average of the fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.08 ppm. In general, the revised 8-hour standards are more protective of public health and the environment and more stringent than the pre-existing 1-hour ozone standards.

Short-term (1- to 3-hour) and prolonged (6- to 8-hour) exposures to ambient ozone have been linked to a number of adverse health effects. Short-term exposure to ozone can irritate the respiratory system, causing coughing, throat irritation, and chest pain. Ozone can reduce lung function and make it more difficult to breathe deeply. Breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and the use of additional medication. Increased hospital admissions and emergency room visits for respiratory problems have been associated with ambient ozone exposures. Longer-term ozone exposure can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. A lower quality of life may result if the inflammation occurs repeatedly over a long time period (such as months, years, a lifetime). Recent epidemiological studies have shown a correlation between acute ozone exposures and increased risk of premature death.

People who are particularly susceptible to the effects of ozone include people with respiratory diseases, such as asthma, and people with unusual sensitivity to ozone. Those who are exposed to higher levels of ozone include adults and children who are active outdoors.

In addition to causing adverse health effects, ozone affects vegetation and ecosystems, leading to reductions in agricultural crop and commercial forest yields; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests, and other environmental stresses (e.g., harsh weather). In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can also decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of our national parks and recreation areas. The economic value of some welfare losses due to ozone can be calculated, such as crop yield loss from both reduced seed production (e.g., soybean) and visible injury to some leaf crops (e.g., lettuce, spinach, tobacco), as well as visible injury to ornamental plants (i.e., grass, flowers, shrubs). Other types of welfare loss may not be quantifiable (e.g., reduced aesthetic value of trees growing in heavily visited national parks). More detailed information on health effects of ozone can be found at the following EPA Web

would be identical whether EPA regulated EGUs through the proposed Federal trading programs or the State regulated EGUs through their SIP.

site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.*

Presently, wide geographic areas, including most of the nation's major population centers, experience ozone levels that violate the NAAQS for 8-hour ozone. These areas include much of the eastern part of the United States and large areas of California. The EPA published the 8-hour ozone attainment and nonattainment designations in the **Federal Register** on April 30, 2004 (69 FR 23858).

3. Other Environmental Effects Associated With SO_2 and NO_X Emissions

In addition to the enumerated human health and welfare benefits resulting from reductions in ambient levels of $PM_{2.5}$ and ozone, reductions in NO_X and SO_2 will contribute to substantial visibility improvements in many parts of the eastern United States. Reductions in these pollutants will also reduce acidification and eutrophication of water bodies in the region. In addition, reducing emissions of NO_X and SO_2 from EGUs can be expected to reduce emissions of mercury. Reduced mercury emissions in turn may reduce mercury loadings in lakes and thereby potentially decrease both human and wildlife exposure to fish containing mercury.

C. What Is the Statutory and Regulatory Background for Today's Action?

1. What Is the ''Good Neighbor'' Provision?

Following promulgation of new or revised NAAQS, the CAA requires all areas, regardless of their designation as attainment, nonattainment, or unclassifiable, to submit SIPs containing provisions specified under section 110(a)(2). Among these requirements are those specified by the so-called ''good neighbor'' provision section 110(a)(2)(D) which addresses interstate transport of air pollution.

Section 110(a)(2)(D) requires that a SIP contain adequate provisions—

(i) Prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) Contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to [any] national primary or secondary ambient air quality standard, or

(II) Interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.

(ii) Insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);

Section 110(a)(2)(D) is the underlying provision for EPA's CAIR and today's proposed section 126 and FIP actions. Under the CAIR, EPA established the amount of SO_2 and NO_X emissions that each CAIR-affected State must prohibit through SIP revisions to address interstate transport with respect to the $PM_{2.5}$ and 8-hour ozone NAAQS.

2. What Is the CAA Section 126 Provision?

Subsection (a) of section 126 requires, among other things, that SIPs require major proposed new (or modified) stationary sources to notify nearby States for which the air pollution levels may be affected by the fact that such sources have been permitted to commence construction. Subsection (b) provides:

Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) * * * or this section.* * *

Subsection (c) of section 126 states that—

[I]t shall be a violation of this section and the applicable implementation plan in such State [in which the source is located or intends to locate]—

(1) For any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of section 110(a)(2)(D)(ii)[2] or this section, or

(2) For any major existing source to operate more than three months after such finding has been made with respect to it.

However, subsection (c) further provides that EPA may permit the continued operation of such major existing sources beyond the 3-month period, if such sources comply with EPA-promulgated emissions limits within 3 years of the date of the finding.

3. What Is EPA's Previous Section 126 Rulemaking?

The EPA has previously taken action under section 126 to address interstate ozone transport (64 FR 28250; May 25, 1999) and (65 FR 2674; January 18, 2000). Because there are many parallels between that earlier action and today's proposal, we briefly discuss our earlier action here.

Like the present rulemaking, EPA's previous section 126 rulemaking, dealing with interstate transport of NO_X, occurred essentially in conjunction with an EPA rulemaking dealing with interstate transport of the same pollutants, the NO_X SIP Call (62 FR 60318; November 7, 1997). As in today's rule, EPA concluded that section 126 and section 110(a)(2)(D)(i) are integrally connected (due to the reference to the section 110(a)(2)(D) prohibition found in section 126(b)). Thus, the interstate transport problem at issue could be addressed under either provision, and once the underlying section 110(a)(2)(D) SIP deficiency is eliminated, there no longer is a basis for EPA to make a positive finding under section 126. (See sections II and III below for a more detailed discussion.) In the earlier rulemaking, we therefore concluded that emissions reductions sufficient to eliminate a section 110(a)(2)(D) SIP deficiency would also be sufficient to satisfy section 126. The NO_X SIP Call required SIP revisions eliminating the amount of emissions that contribute significantly to nonattainment in downwind States, the amount of emissions reductions corresponding to the quantity of emissions that could be eliminated by the application of highly cost-effective controls on specified sources in each upwind State. The section 126 remedy consequently called for the same set of highly cost-effective controls for the section 126 source categories, based on the record of the NO_X SIP Call. We are adopting this same conceptual approach in today's rulemaking.

There are also parallels between our earlier section 126 action and this action with regard to timing of actions in the section 126 proceeding and in the closely-related interstate transport proceeding under section 110(a)(2)(D). Because a section 126 finding turns on the existence of a section 110(a)(2)(D) deficiency, in the May 1999 Section 126 Rule, we determined which petitions had technical merit, but we stopped short of granting the findings for the petitions. Instead, we stated that because we had promulgated the NO_X SIP Call, as long as an upwind State remained on track to comply with that rule, EPA would defer making the section 126 findings. Thus, the Section 126 Rule included a provision under which the rule would be automatically withdrawn for sources in a State once that State submitted and EPA fully approved a SIP that complied with the NO_X SIP Call or if EPA promulgated a FIP to achieve the emissions reductions. (See 64 FR 28271–28274.) The reason

[2] While the text of section 126 refers to section 110(a)(2)(D)(ii), EPA believes that this cross-reference is a scrivener's error that occurred during the 1990 Amendments to the CAA and that Congress intended to refer to section 110(a)(2)(D)(i). (See 64 FR 28267.) The EPA's interpretation was upheld in *Appalachian Power Co.* v. *EPA*, 249 F. 3d 1032, 1040–44 (DC Cir. 2001).

for this withdrawal would be the fact that the affected State's SIP revision or EPA's promulgated FIP would fulfill the section 110(a)(2)(D) requirements, so that there would no longer be any basis for the section 126 finding with respect to that State. Later judicial action staying the NO_X SIP Call rule resulted in EPA granting the section 126 petitions at issue, but the new rule retained the basic linkage between section 126 and section 110(a)(2)(D) by providing that EPA would withdraw the section 126 findings upon EPA approval of a SIP satisfying the emission reduction requirements of the NO_X SIP Call rule or upon EPA's promulgation of a FIP that achieved the emissions reductions. (See 65 FR at 2683 and *Appalachian Power* v. *EPA*, 249 F. 3d 1032, 1039 (DC Cir. 2001).) Similarly, in today's rulemaking, we are proposing to deny the section 126 petition if we approve SIPs which satisfy the emission reduction requirements of the CAIR, or if we promulgate a FIP which includes the emission reduction requirements of the CAIR.

Finally, in the earlier section 126 rule, EPA adopted as a remedy for section 126 a Federal NO_X cap and trade program patterned after the model NO_X cap and trade program that EPA developed for States as an option to meet their NO_X SIP Call requirements. The EPA is proposing the same approach here in the event that it grants North Carolina's section 126 petition.

4. What Is the Clean Air Interstate Rule?

The EPA developed the Clean Air Interstate Rule (CAIR) to address interstate pollution transport with respect to the newly adopted $PM_{2.5}$ and 8-hour ozone NAAQS. The EPA published the proposals for CAIR (previously referred to as the Interstate Air Quality Rule) on January 30, 2004 (69 FR 4566) and June 10, 2004 (69 FR 32684), a notice of data availability on August 6, 2004 (69 FR 47828), and the final rule on May 12, 2005 (70 FR 25162). The EPA is providing this description of the CAIR to help place today's proposal in context. As stated above, EPA is not accepting comment on the CAIR or otherwise reopening any issue decided in the CAIR for reconsideration or comment, except that EPA is taking comment specifically on the revisions to CAIR that EPA is proposing in today's action (Section VII in this preamble discusses the proposed changes to CAIR).

In the CAIR, based on air quality modeling analyses and cost analyses, EPA concluded that SO_2 and NO_X emissions in certain States in the eastern part of the country, through the phenomenon of air pollution transport,[3] contribute significantly to $PM_{2.5}$ and/or 8-hour ozone nonattainment and maintenance problems in downwind States. The CAIR establishes emission reduction requirements for the affected upwind States under CAA section 110(a)(2)(D). The affected States and the District of Columbia have until September 11, 2006 to adopt and submit SIP revisions to achieve these required reductions. The SIP revision must contain measures that will assure that sources in the State reduce their SO_2 and/or NO_X emissions sufficiently to eliminate the amounts of SO_2 and NO_X that contribute significantly to nonattainment downwind. Reducing upwind precursor emissions will assist the downwind $PM_{2.5}$ and 8-hour ozone areas in achieving and maintaining the NAAQS. Moreover, attainment will be achieved in a more equitable, cost-effective manner than if each nonattainment area attempted to achieve attainment by implementing local emissions reductions alone.

The EPA specified that the CAIR emissions reductions be implemented in two phases. The first phase of NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of SO_2 reductions starts in 2010 (covering 2010–2014); the second phase of reductions for both NO_X and SO_2 starts in 2015 (covering 2015 and thereafter). The emissions reduction requirements are based on controls that are known to be highly cost effective for EGUs, however States have the flexibility to determine what measures to adopt to achieve the necessary reductions. In the CAIR, EPA provided model SO_2 and NO_X trading programs for EGUs that States can choose to adopt to meet the emissions reduction requirements in a flexible and highly cost-effective manner.

If EPA ultimately includes Delaware and New Jersey in the CAIR with respect to the $PM_{2.5}$ NAAQS (see proposal at 70 FR 25408), EPA estimates that the CAIR would reduce SO_2 emissions by 3.6 million tons in 2010 and by 3.9 million tons in 2015; and would reduce annual NO_X emissions by 1.2 million tons in 2009 and by 1.5 million tons in 2015. (These numbers reflect the annual SO_2 and NO_X requirements.) If all these States (including Delaware and New Jersey for the $PM_{2.5}$ NAAQS) choose to achieve these reductions through EGU controls, then EGU SO_2 emissions in the affected States would be capped at 3.7 million tons in 2010 and 2.6 million tons in 2015;[4] and EGU annual NO_X emissions would be capped at 1.5 million tons in 2009 and 1.3 million tons in 2015.

Based on the promulgated CAIR (70 FR 25162), EPA estimates that the required SO_2 and NO_X emissions reductions would, by themselves, bring into attainment 52 of the 79 counties that are otherwise projected to be in nonattainment for $PM_{2.5}$ in 2010, and 57 of the 74 counties that are otherwise projected to be in nonattainment for $PM_{2.5}$ in 2015. The EPA further estimates that the required NO_X emissions reductions would, by themselves, bring into attainment 3 of the 40 counties that are otherwise projected to be in nonattainment for 8-hour ozone in 2010, and 6 of the 22 counties that are projected to be in nonattainment for 8-hour ozone in 2015. In addition, the CAIR will improve $PM_{2.5}$ and 8-hour ozone air quality in the areas that would remain nonattainment for those two NAAQS after implementation of the CAIR. Because of CAIR, the States with those remaining nonattainment areas will find it less burdensome and less expensive to reach attainment by adopting additional controls. The CAIR will also reduce $PM_{2.5}$ and 8-hour ozone levels in attainment areas, providing significant health and environmental benefits in all areas of the eastern United States.

For a more complete description of the CAIR and its impacts, the reader is encouraged to review the preamble to the CAIR.

5. What Are the Findings of Failure To Submit for the Section 110(a)(2)(D) Plans?

In a final rule published on April 25, 2005 (70 FR 21147), we made national findings that States have failed to submit SIPs required under section 110(a)(2)(D) to address interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS.

The April 25, 2005 findings started a 2-year clock for EPA to promulgate a Federal implementation plan (FIP) to address the requirements of section 110(a)(2)(D). Under section 110(c)(1), EPA may issue a FIP any time after such findings are made and must do so unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated. The EPA

[3] When we use the term ''transport'' we mean to include the transport of both fine particles ($PM_{2.5}$) and their precursor emissions and/or transport of both ozone and its precursor emissions.

[4] It should be noted that the banking provisions of the cap and trade program which encourage sources to make significant reductions before 2010 also allow sources to operate above these cap levels until all of the banked allowances are used, therefore EPA does not project that these caps will be met in 2010 or 2015.

intends to issue guidance regarding how States outside the CAIR region could satisfy the section 110(a)(2)(D) requirement. For States affected by CAIR, an approved SIP meeting the CAIR requirements would satisfy the requirement and turn off the FIP clock. As discussed below in section IV, EPA is today proposing a FIP for States affected by the CAIR. The EPA intends to promulgate the CAIR FIP by March 15, 2006 along with the final section 126 response. However, EPA intends to withdraw the FIP in a State in coordination with approval of a SIP for the State that meets the CAIR requirements.

The findings do not start a sanctions clock pursuant to section 179 because the findings do not pertain to a part D plan for nonattainment areas required under section 110(a)(2)(I) and because the action is not a SIP Call pursuant to section 110(k)(5).

D. Summary of North Carolina's Section 126 Petition

1. What Sources Does the Petition Target?

The North Carolina petition requests relief from certain emissions from large EGUs located in 13 States. With respect to the $PM_{2.5}$ NAAQS, the petition requests that EPA find that NO_X and SO_2 emissions from large EGUs in 12 States (Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia) are significantly contributing to nonattainment in, or interfering with maintenance by, North Carolina. With respect to the 8-hour ozone NAAQS, the petition requests that EPA find that NO_X emissions from large EGUs in 5 States (Georgia, Maryland, South Carolina, Tennessee, and Virginia) are significantly contributing to nonattainment in, or interfering with maintenance by, North Carolina (Petition, p.1.)

The petition defines the term ''EGUs'' as all facilities meeting the criteria described in the proposal for the CAIR. (See 69 FR 4566, 4610; January 30, 2004.) In the proposal for the CAIR, we defined EGUs as ''fossil-fuel fired boilers and turbines serving an electric generator with a nameplate capacity of greater than 25 megawatts (MW) producing electricity for sale.'' (*Id.*) (See section VII of today's preamble for clarification of the EGU definition.[5])

2. What Control Remedy Does the Petition Request?

In its petition, North Carolina states that compliance with the NO_X and SO_2 emissions budgets in the proposal for the CAIR would satisfy the requirements of the petition. These emissions budgets were based on controls that are highly cost effective for EGUs. North Carolina also states that it does not oppose the flexibility discussed by EPA (69 FR at 4622) to allow equivalent reductions from other source categories in given States, so long as those reductions are real and enforceable (Petition, p. 24).

In the CAIR, EPA provided model NO_X and SO_2 cap and trade programs for EGUs as control options for States to choose to meet the CAIR emissions reductions requirements. The trading programs allow interstate trading among sources in all States subject to the CAIR that adopt the programs. In its petition, North Carolina said it recognizes the value of allowing sources flexibility to reduce their emissions in the most cost-effective manner consistent with the statute. However, North Carolina expressed concerns about a regional trading program that could operate to deprive North Carolina of the benefits of the control remedy in the subset of States that affect North Carolina (Petition, pp. 25–28). We address this issue below in section VI.

3. What Is the Technical Support for the Petition?

To support its claim that EGUs outside North Carolina are contributing significantly to nonattainment and maintenance problems in the State, North Carolina relies largely on EPA's technical analyses for the proposed CAIR. Therefore, as discussed above, the petition targets sources in the same States that EPA linked to North Carolina in the proposed CAIR. As additional support, North Carolina cites analyses conducted by the Southern Appalachian Mountains Initiative (SAMI) on $PM_{2.5}$ transport, North Carolina's further evaluation of the SAMI's analyses, as well as back trajectory analyses performed by the North Carolina Division of Air Quality from $PM_{2.5}$ monitors in two counties. (See Petition, pp. 13–17.)

E. What Is the Litigation on the Section 126 Rulemaking Schedule?

On March 19, 2004, EPA received a petition from the State of North Carolina filed under CAA section 126. Section 126(b) requires EPA to make the requested finding, or to deny the petition, within 60 days of receipt. It also requires EPA to provide a public hearing before acting on the petition. In addition, EPA's action under section 126 is subject to the procedural requirements of section 307(d) of the CAA. (See section 307(d)(2)–(5).) One of these requirements is that EPA conduct notice-and-comment rulemaking. Section 307(d)(10) provides for a time extension, under certain circumstances, for rulemakings subject to that provision. Specifically, it allows statutory deadlines that require promulgation in less than 6 months from proposal to be extended to not more than 6 months from proposal to afford the public and the Agency adequate opportunity to carry out the purposes of section 307(d). In an action published on May 26, 2004 (69 FR 30038), EPA extended the deadline for EPA to take action on the North Carolina petition by the full 6 months, to November 18, 2004.

On February 17, 2005, the State of North Carolina and the citizen group Environmental Defense filed complaints against EPA seeking to compel EPA to take action on the State's section 126 petition: *State of North Carolina* v. *Johnson,* No. 5:05–CV–112 (E.D. N.C.) and *Environmental Defense* v. *Johnson,* No. 5:05–CV–113 (E.D.N.C.). The EPA, North Carolina, and Environmental Defense filed a proposed consent decree that would establish a schedule for EPA to act on the petitions. Pursuant to CAA section 113(g), the EPA solicited comments on the proposed consent decree, by notice dated March 2, 2005 (70 FR 10089). The comment period closed April 1, 2005 without EPA receiving negative comment. On May 9, 2005, the court entered a slightly modified version of the consent decree.

The schedule in the consent decree requires that no later than August 1, 2005, EPA must sign for publication the proposed action to grant or deny the petition. If EPA proposes to approve any part of the petition, the proposal must include the proposed remedy. No later than March 15, 2006, EPA must take final action to grant or deny the petition. If EPA grants any part of the petition (*i.e.,* makes a section 126(b) finding), the final action must include the remedy. The consent decree also requires EPA to hold a public hearing on the proposal during the week of September 12, 2005 in North Carolina. Today's proposal meets the first deadline set forth in the consent decree. The EPA has scheduled two public hearings during the week of September 12, 2005, one to be held in

[5] As noted in section VII below, EPA is proposing to amend the definition of EGU to remove certain ambiguities regarding the definition's application to solid waste incinerators and to existing units that formerly generated electricity for sale but have not done so since before November 15, 1990. We understand the North Carolina section 126 petition as applying only to the sources included in the clarified definition and not to sources we are proposing to exclude from the definition of EGU.

North Carolina and the other in Virginia (see **DATES** above for further information on the hearings).

F. How Is EPA Addressing the Section 126-Related Comments Received During the CAIR Rulemaking?

In the January 30, 2004 CAIR proposal, EPA set forth its general view of the approach it expected to take in responding to any section 126 petition that might be submitted that relies on essentially the same record as the CAIR (69 FR at 4580). That approach is the one EPA used in addressing section 126 petitions that were submitted to EPA in 1997 while EPA was developing the NO_X SIP Call to control ozone transport (as discussed in section I.C.3. above).

The EPA received comments on the CAIR proposal regarding its intended approach for acting on any future section 126 petitions that might be filed. Many commenters expressed support for the approach that EPA had outlined. Other commenters raised issues regarding the timing of emissions reductions under a new section 126 action. Some pointed out that the CAIR compliance date would be later than the 3 years allowed for compliance under section 126. Some were concerned that the proposed CAIR compliance date was later than many attainment dates and, therefore, States may need section 126 petitions in order to get earlier upwind reductions in order to meet their attainment dates. Some questioned the legal basis for linking the two rules. Several commenters expressed concern that EPA would be restricting the use of or weakening the section 126 authority. A number of commenters urged EPA not to prejudge any petition, but to evaluate each on its own merit. Some thought that any petitions submitted prior to designations or before States had had the opportunity to prepare SIPs would be premature and should be denied. Others suggested that the CAIR might not solve all the transport problems and that States would need to retain the section 126 tool to seek further reductions.

As discussed above, after issuing the CAIR proposal, EPA received, on March 19, 2004, the section 126 petition from North Carolina. In the final CAIR, we stated that when we propose action on the North Carolina petition, we would set forth our view of the interaction between section 110(a)(2)(D) and section 126 . Section II below explains EPA's view of this interaction.

In addition, we said we would take into consideration and respond to the section 126-related comments we received on the CAIR. The EPA has reviewed all the comments and will be providing responses to the relevant ones in the docket for this rulemaking action.

II. What Is EPA's Legal and Analytical Approach for the Section 126 Petition?

As described in section I.C.2 above, section 126 of the CAA is integrally related to the CAA's ''good neighbor'' provision, section 110(a)(2)(D), which requires States to adopt implementation plans to prohibit emissions from sources within the State that significantly contribute to other States' nonattainment of a NAAQS, or which interfere with other States' ability to maintain a NAAQS. Under section 126, a downwind State ''may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of CAA section 110(a)(2)(D).'' Should EPA make a finding that a source or group of sources is emitting in violation of the section 110(a)(2)(D) prohibition, existing sources in violation may operate no longer than 3 months unless the sources comply with emission limitations and compliance schedules provided by the Administrator which bring about compliance ''as expeditiously as practicable, but in no case later than three years after the date of such finding.'' See section 126(c).

The EPA's determination whether or not to grant a section 126 petition consequently turns on whether SIPs are in violation of section 110(a)(2)(D). See *Appalachian Power* v. *EPA*, 249 F. 3d 1032, 1045–46 (DC Cir., 2001), holding that the determination of whether the ''prohibition'' on excessive interstate transport of air pollutants is being violated is the same under section 110(a)(2)(D) and section 126; see also North Carolina Petition p. 22 (''the operative legal standard under sections 110 and 126 is identical''). Moreover, because of this interrelation and identity, EPA has construed section 126 as applying on a statewide contribution basis when dealing with issues of interstate transport of ozone precursors. This means that a finding by EPA that a SIP is in violation of section 110(a)(2)(D)(i) is a sufficient basis for a finding that sources within that State are in violation of that prohibition for purposes of section 126(b) (64 FR at 28282). No more individualized determination for a source or group of sources is necessary. *Id.* This is because sources' contribution to nonattainment is collective, so that even relatively small individual contributions are significant in the aggregate. *Id.* Thus, ''[i]f State-wide emissions contribute significantly to nonattainment downwind, then the State's section 126 sources may be subject to SIP controls; if State-wide emissions do not contribute significantly, then the State's section 126 sources would not be subject to SIP control.'' *Id.;* see *Appalachian Power,* 249 F. 3d 1049–50 (upholding this determination). Under this approach, therefore, if EPA determines that a State's SIP fails to meet the requirements of section 110(a)(2)(D)(i) with respect to a downwind State, it follows that the prohibition in section 126 is also violated with respect to that downwind State.

In the CAIR, EPA defined ''significant contribution'' as consisting of an air quality factor reflecting an upwind State's ambient impact on downwind nonattainment areas, and the cost-factor of availability of highly cost-effective controls (70 FR at 25174). The reductions required are expressed as Statewide budgets of $PM_{2.5}$ and ozone precursors (SO_2 and NO_X for $PM_{2.5}$, and NO_X for ozone) susceptible to reduction by highly cost effective controls. For $PM_{2.5}$, an upwind State must contribute at least 0.2 $\mu g/m^3$ $PM_{2.5}$ to at least one downwind nonattainment area (the ''link'') to satisfy the air quality part of the test. *Id.* at 25191. For ozone, the air quality component is satisfied if the maximum contribution by an upwind State is at least 2 parts per billion, the average contribution is greater than one percent, and certain other numerical criteria are met. *Id.* at 25175. The CAIR rule also stated that an upwind State's emissions can interfere significantly with a downwind State's maintenance of a NAAQS when EPA, or a State, can reasonably project based on available data that in the absence of CAIR controls, a current or projected nonattainment area will revert to nonattainment, after having achieved attainment, due to continued emissions growth or to other relevant factors. *Id.* at 25193; see also the response to comments document for the CAIR, section III.C.17, docket number OAR–2003–0053–2165.

The EPA is adopting this same approach in the present rulemaking. This, of course, is a consequence of EPA's interpretation (just explained) that a violation of 110(a)(2)(D)(i) also indicates that sources are emitting in violation of the section 110(a)(2)(D) prohibition for purposes of section 126(b). For the same reason, EPA is adopting the highly cost-effective component of the test from the CAIR rule, with the consequent emission budgets.

Once EPA finds under section 126(b) that a source (or sources) is operating in violation of the section 110(a)(2)(D)(i)

prohibition, the violation would be eliminated (assuming that sources continue to operate) by EPA approving a SIP containing provisions eliminating the significant contribution, or by EPA itself adopting a FIP which contains provisions eliminating that contribution, by the deadline for the section 126 sources. This means that a section 126(b) violation no longer exists once EPA approves a timely SIP, or adopts a timely FIP, requiring each State contributing significantly (in this case, to North Carolina) to reduce emissions to the levels reflecting elimination of the State's significant contribution, as specified in the CAIR. This result is again a consequence of the integral relationship of section 126(b) and section 110(a)(2)(D).

The EPA intends to apply these same principles in responding to future section 126 petitions from States in the CAIR region addressing CAIR pollutants. Thus, we would deny these petitions with respect to any State having an approved SIP meeting the CAIR emissions reductions requirements and with respect to States for which EPA has promulgated a CAIR FIP. In such a case there would be no underlying section 110(a)(2)(D) violation, and such a violation is the predicate for granting a section 126 petition.

III. What Is EPA's Proposed Action on the Section 126 Petition?

As discussed in the preceding section, EPA is proposing to rely on the conclusions drawn in the final CAIR in determining whether emissions from sources in the States named in the petition contribute significantly to 8-hour ozone and/or $PM_{2.5}$ nonattainment and maintenance problems in North Carolina. As discussed in section I above, North Carolina based its petition in large part on the analyses for the proposed CAIR—identifying EGUs in the same upwind States that EPA proposed to link to North Carolina. The EPA conducted new modeling analyses using updated emissions inventories for the final CAIR. The EPA also applied a different value for the threshold contribution level for the air quality portion of the significant contribution determination for $PM_{2.5}$ in the final CAIR. Therefore, the upwind State-to-downwind State linkages differed in the final CAIR from the proposal.

A. What Is EPA's Proposed Action With Respect to the 8-Hour Ozone NAAQS?

In its petition, North Carolina requested that EPA make findings that large EGUs in Georgia, Maryland, South Carolina, Tennessee, and Virginia contribute significantly to nonattainment in, or interfere with maintenance by, North Carolina with respect to the 8-hour ozone NAAQS. In the proposed CAIR, EPA linked these States to 8-hour ozone air quality problems in Mecklenburg County, North Carolina. In the final CAIR, EPA's updated analyses project all of North Carolina to be in attainment for 8-hour ozone in the CAIR 2010 base case. Therefore, EPA did not link any upwind States to North Carolina with respect to the 8-hour ozone NAAQS in the final CAIR (See preamble Table VI–9; 70 FR at 25249). Consequently, EPA is proposing to deny the section 126 petition with respect to the 8-hour ozone NAAQS.

B. What Is EPA's Proposed Action With Respect to the $PM_{2.5}$ NAAQS?

In its petition, North Carolina also requested that EPA make findings that large EGUs in Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia contribute significantly to nonattainment in, or interfere with maintenance by, North Carolina with respect to the $PM_{2.5}$ NAAQS. In the proposed CAIR, these 12 States were linked to $PM_{2.5}$ nonattainment problems in North Carolina. In the final CAIR, as noted, EPA used different, updated modeling and also applied a 0.2 $\mu g/m^3$ contribution threshold level rather than the proposed 0.15 $\mu g/m^3$ for the air quality portion of the significant contribution determination (70 FR 25190–25191). Based on the updated modeling and the 0.2 $\mu g/m^3$ contribution threshold level, EPA determined in CAIR that the following 10 States are significantly contributing to $PM_{2.5}$ air quality problems in North Carolina: Alabama, Georgia, Indiana, Kentucky, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia (see preamble Table VI–8; 70 FR at 25248–25249). As explained in section II above, under the collective contribution approach, this means for purposes of section 126(b) that sources within these States for which EPA determined highly cost-effective controls are available are also contributing significantly to $PM_{2.5}$ nonattainment problems in North Carolina.

In determining what action to propose in response to the $PM_{2.5}$ portion of the section 126 petition, EPA is taking into consideration the FIP that is being proposed today in conjunction with this section 126 action (see section IV below). The FIP proposes control requirements for each of the States affected by the CAIR in order to achieve the emissions reductions required to address interstate transport. The EPA plans to issue the final FIP at the same time as the final section 126 action. Therefore, for EGUs in States linked to North Carolina in CAIR (and therefore, for which EPA is proposing a FIP), EPA is proposing in the alternative (1) to deny the petition if EPA issues the final FIP to address the interstate transport no later than the final section 126 response or (2) to grant the petition and make section 126 findings if EPA does not promulgate the FIP prior to or concurrently with the final section 126 response. Because the FIP would fully address the $PM_{2.5}$-related interstate transport problem identified in CAIR and thus eliminate the section 110(a)(2)(D) violation, there would no longer be a basis for the section 126 findings. As discussed in section VI, we are proposing the Federal CAIR NO_X and SO_2 cap and trade programs as the control remedy for both the section 126 action and the FIP. Therefore, whether the upwind sources in these 10 States are regulated under the section 126 action or the FIP, the emissions reductions requirements and compliance deadlines would be the same.

For EGUs located in Illinois and Michigan, which are not linked to North Carolina in the final CAIR with respect to the $PM_{2.5}$ NAAQS (70 FR 25247–48), EPA is proposing to deny the petition.

The EPA notes that it is not including any regulatory text for the proposed findings because EPA's preferred alternative is to promulgate the CAIR FIP and fully deny the North Carolina section 126 petition.

C. What Are the Proposed Requirements for Sources for Which EPA Makes a Section 126(b) Finding?

The EPA is proposing, in sections V and VI below, NO_X and SO_2 Federal cap and trade programs that would apply to any new or existing EGU for which EPA ultimately makes a section 126(b) finding in response to the North Carolina petition. The proposed Federal cap and trade programs are largely the same as the model trading rules for EGUs that EPA provided in the CAIR as control options for States, although EPA is proposing certain differences that are primarily intended to account for Federal implementation and to facilitate transfer from the proposed Federal programs to State programs. (See section VI for a description of the differences). The same EGU budgets and compliance dates would apply.

As in the CAIR, the NO_X and SO_2 reductions would occur in two phases.

The first phase of NO_X reductions would start in 2009 (covering 2009–2014) and the first phase of SO_2 reductions would start in 2010 (covering 2010–2014); the second phase of reductions for both NO_X and SO_2 would start in 2015 (covering 2015 and thereafter).

Section 126(c) states, in relevant part, that: it shall be a violation of this section and the applicable implementation plan in such State

(1) For any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of section 110(a)(2)(D)([i]) or this section, or

(2) For any major existing source to operate more than three months after such finding has been made with respect to it.

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 110(a)(2)(D)([i]) as expeditiously as practicable, but not later than three years after the date of such finding.

The Federal cap and trade programs that EPA is proposing would satisfy the section 126 requirements. The control requirements would ensure that the sources do not emit in violation of the section 110(a)(2)(D)(i) prohibition and would serve as the alternative set of requirements that the Administrator may apply for the purpose of allowing existing sources subject to a section 126(b) finding to operate for more than 3 months after the finding is made.

Under the consent decree, described in section I above, EPA must sign the final action on the petition by March 15, 2006. If EPA makes any findings at that time, and they become effective 60 days later, consistent with section 126(c), compliance with the control remedy must be required no later than May 14, 2009. The control remedy that EPA is proposing would satisfy the 3-year compliance period in section 126(c). First, the remedy would commence within the 3-year maximum timeframe set out in section 126(c), since as just explained, the phase I NO_X control requirements would take effect on January 1, 2009. Further controls on SO_2 and NO_X would be required as soon as technically feasible. The EPA views the proposed NO_X and SO_2 emissions reduction requirements as a single action, but one that cannot be fully implemented in 2009 and instead must be implemented in phases solely for reasons of feasibility. In analyses conducted for the CAIR, EPA determined that part of the NO_X and SO_2 emissions reductions cannot feasibly be implemented until 2015 and the first phase of SO_2 emission reductions cannot feasibly be implemented until 2010. In this regard, we note that section 126(c) on its face contemplates that control measures satisfying both section 126 and section 110(a)(2)(D) may stretch out beyond a 3-year period. Section 126(c) states that sources that are subject to a section 126(b) finding may continue to operate if they comply with ''emissions limitations and compliance schedules (*containing increments of progress*) provided by [EPA]'' (emphasis added); the reference to increments of progress can describe a situation where compliance is stretched out over periods exceeding 3 years provided initial action (*i.e.*, an initial increment of progress) occurs within 3 years. See also North Carolina Petition at pp. 28–29 supporting a phased approach to compliance and noting that a stepwise approach to regional emissions reductions is ''consistent with the requirement that a section 126 remedy 'contain[] increments of progress * * *'.'' Section VII of this preamble describes the proposed section 126 control requirements in greater detail.

D. When and How Would EPA Withdraw Section 126 Findings and Control Requirements in a State if EPA Approves a SIP To Meet the CAIR?

Under today's proposal, by March 15, 2006, EPA would take final action to either make section 126 findings for sources in 10 States contributing significantly to North Carolina's nonattainment and maintenance problems for the $PM_{2.5}$ NAAQS or promulgate a FIP for all CAIR States for the $PM_{2.5}$ and/or 8-hour ozone NAAQS. The CAIR requires States to submit SIP revisions by September 11, 2006. Therefore, the Federal CAIR trading programs would be promulgated in advance of the SIP submission deadline. As stated previously, the section 126 response and FIP would not limit the options available to States to meet the requirements of CAIR. The EPA intends to withdraw the section 126 or the FIP requirements in a State in coordination with approval of an implementation plan for the State that meets the CAIR requirements. In the timing of the SIP approval, EPA would take into consideration whether the SIP approval would occur before or after EPA has begun recording allowances in source accounts under Federal CAIR trading programs.

It is EPA's preference that States regulate sources to control the interstate transport, including making decisions regarding NO_X allocations, should a State choose to participate in the State CAIR trading programs. Consequently, EPA does not intend to record NO_X allocations in sources' allowance accounts (or take any other steps to implement the section 126 or FIP requirements that could impact a State's ability to regulate their sources in a different manner) until December 1, 2007, more than a year after the CAIR SIP submission deadline.[6] This would allow EPA time to take rulemaking action to approve timely, compliant SIPs and withdraw the section 126 or FIP requirements.

If a SIP is approved that includes the EPA-administered State CAIR trading programs after EPA has recorded allowances for the Federal CAIR trading programs, EPA would work with the State to ensure a smooth transition from the Federal trading programs to the State trading programs. To preserve the integrity of the trading program budgets, once Federal allocations are recorded in source accounts for a particular control period, EPA does not intend to approve overlapping State allocations for the same control period. Rather, EPA will work with the States to approve State allocations for control periods that begin upon the expiration of a control period for which Federal allocations have been recorded in source accounts.

In section VI below, EPA proposes the schedule for recording Federal NO_X allocations in source accounts. Under this schedule, EPA seeks to balance two goals: (1) To provide adequate time for States to submit and for EPA to approve SIPs containing the NO_X allocations, and (2) to provide certainty to sources regarding their CAIR NO_X allocations in adequate time for sources to make compliance decisions. Under this schedule, EPA would record the allowances 1 year at a time for the first two control periods. Thus, for SIPs approved after EPA has recorded the 2009 allocations on December 1, 2007, but before EPA has recorded the 2010

[6] The CAIR requires affected sources to begin monitoring 1 year before the initial control periods (*i.e.*, sources begin monitoring in 2008 for the NO_X programs and begin monitoring in 2009 for the SO_2 program). Note that EPA would take any necessary actions to implement the monitoring provisions of the proposed Federal trading rules in time for monitoring to begin in 2008. To the extent that a State chooses to control EGUs to meet its CAIR obligations, the monitoring requirements would be identical whether EPA regulated EGUs through the proposed Federal trading programs or the State regulated EGUs through their SIP.

allocations on December 1, 2008, EPA would time the withdrawal of the FIP or section 126 requirements such that allocations would be made under the State CAIR trading program for the 2010 control period. There would be another opportunity for transitioning from the Federal to State trading programs for the 2011 control period. As discussed in section VI below, EPA is proposing to record NO_X allowances in source accounts by December 1, 2009 for the 2011–2013 control periods. Therefore, for SIPs approved after December 1, 2009, the transition from the Federal to State program would not occur until the 2014 control period. The EPA believes it is unlikely that there would be any outstanding SIPs to be approved after December 1, 2009. The EPA intends to work with States to help ensure that NO_X allowances can be allocated under the State CAIR trading programs beginning with the initial 2009 control period. In order to expedite the approval of the SIP allowance allocation methodology and provide additional flexibility to States, EPA is proposing an abbreviated SIP option as discussed in section VI. See section VI for a detailed discussion of EPA's proposed schedule for recording Federal NO_X allocations in source allowance accounts.

For States that choose to implement the CAIR requirements using a method other than the EPA-administered State CAIR trading programs, the EPA would also carefully consider the timing of the transition from the Federal trading programs to the State-implemented programs to avoid disruption of the Federal trading programs within any annual or ozone season control period.

IV. What Is the Proposed Federal Implementation Plan for the CAIR?

A. What Is the Legal Framework for the Proposed FIP?

Section 110(c)(1) of the CAA requires the Administrator to promulgate a Federal Implementation Plan (FIP) within 2 years of: (1) Finding that a State has failed to make a required submittal, (2) finding that a submittal received does not satisfy the minimum completeness criteria established under section 110(k)(1)(A), or (3) disapproving a SIP submittal in whole or in part. The EPA may issue a FIP any time after making one of these findings or issuing a SIP disapproval and it must do so within 2 years. However, EPA is relieved of this obligation if a SIP revision correcting the deficiency identified is approved by EPA before such a FIP is promulgated.

As discussed in paragraph I.D.5, in a final rule signed the same day as CAIR, EPA found that States have failed to submit SIPs to satisfy the interstate transport requirement under section 110(a)(2)(D)(i) of the CAA for the $PM_{2.5}$ and 8-hour ozone NAAQS (70 FR 21147). These findings started the 2-year clock for the promulgation of a FIP. They did not start a ''sanctions clock'' as there are no mandatory sanctions associated with the FIP or the finding of State failure to submit SIPs to satisfy 110(a)(2)(D)(i).

The EPA has broad authority to act when it has identified deficiencies in SIPs. This authority is of three general types. First, EPA may promulgate any measure which it is permitted to issue pursuant to pre-existing independent statutory authority—for example, the provisions of title II. That is, EPA may promulgate any measure which it has authority to issue in a non-FIP context, without reliance on section 110(c). Second, EPA may invoke section 110(c)'s general FIP authority and act to cure a SIP deficiency in any way not clearly prohibited by statute. Third, under section 110(c), the courts have held that EPA may exercise all authority that the State may exercise under the CAA.

The first type of authority, EPA's general authority is independent of section 110(c). It is not dependent on or altered by finding a deficiency in a SIP.

The second type of authority, EPA's general authority under section 110(c), is essentially remedial. The EPA has broad power under that section to cure a defective State plan. Thus, in promulgating a FIP, EPA may exercise its own, independent regulatory authority under the CAA in any way not clearly prohibited by an explicit provision of the CAA. When EPA has promulgated a FIP, courts have not required explicit authority for specific measures: ''We are inclined to construe Congress' broad grant of power to the EPA as including all enforcement devices reasonably necessary to the achievement and maintenance of the goals established by the legislation.'' (*South Terminal Corp.* v. *EPA*, 504 F.2d 646, 669. (1st Cir., 1974)). See also *City of Santa Rosa* v. *EPA*, 534 F.2d 150, 153–154 (9th Cir., 1976) (upholding the Administrator's authority to promulgate a FIP imposing gas-rationing in Los Angeles on a massive scale). ''The authority to regulate pollution carries with it the power to do so in a manner reasonably calculated to reach that end.'' *Id.* at 155.

In addition, when EPA has determined that a State has not completely discharged its primary responsibility to protect its air quality, EPA is compelled to assume this task and thus the powers of the defaulting State accrue to EPA. As the Ninth Circuit has held, when EPA acts in place of the State pursuant to a FIP under section 110(c), EPA ''stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA,'' *Central Arizona Water Conservation District* v. *EPA*, 990 F.2d 1531, at 1541 9th Cir., 1993). The First Circuit, in an early FIP case, agreed:

> The Administrator must promulgate promptly regulations setting forth an implementation plan for a State should the State itself fail to propose a satisfactory one. The statutory scheme would be unworkable were it read as giving to EPA when promulgating an implementation plan for a State, less than those necessary measures allowed by Congress to a State to accomplish Federal clean air goals. We do not adopt any such crippling interpretation.

South Terminal Corporation v. *EPA*, 504 F.2d 668 (1st Cir., 1974).

In the case of federally-recognized Indian Tribes, as we explained in the CAIR, (70 FR 25167–68) Tribes are subject to section 110(a)(2)(D), but are not required to submit implementation plans. The EPA is required to promulgate FIPs for Indian country as necessary or appropriate to protect air quality. See 40 CFR 49.11(a). Presently, there are no emissions sources in Indian country within the region affected by CAIR which would make a FIP necessary or appropriate. In the event of the planned construction of such a source within Indian country in the 28-State region subject to CAIR, EPA will work with the relevant Tribal government to regulate the source through a Tribal or Federal implementation plan. In the case of an EGU, the EPA anticipates that the Tribal implementation plan (TIP) or FIP would involve the participation of the EGU in the EPA administered cap and trade program. The EPA will also work with the Tribe and affected States to determine how allowances allocated to the Indian country source will affect State allowance allocations. Because any FIPs for Indian country will necessarily be tailored to the specific circumstances, today's proposal contains no such FIP. The reader is referred to the CAIR for a more detailed discussion of the interaction of the CAIR with Indian country (70 FR 25167–68, 25315).

B. What Is the Timing and Scope of the CAIR FIP Action?

As described in the CAIR, EPA views seriously its responsibility to address the issue of regional transport of ozone and ozone precursor emissions.

Decreases in NO_X and SO_2 emissions are needed in the States identified in the CAIR to enable downwind States to develop and implement plans to achieve and maintain the $PM_{2.5}$ and 8-hour ozone NAAQS. The CAIR identified the specific amount of emissions reductions necessary for each State identified in the CAIR to meet their section 110(a)(2)(D) interstate transport obligations. Implementation of these reductions is necessary to enable downwind States to achieve the NAAQS in order to provide clean air for their residents.

Therefore, EPA is proposing FIPs today in conjunction with the proposed action regarding North Carolina's section 126 petition concerning transport of $PM_{2.5}$ and 8-hour ozone precursors as discussed in section III of this proposal. The EPA intends to promulgate these FIPs at the same time as its response to North Carolina's section 126 petition, which must be finalized no later than March 15, 2006 in accordance with a judicially enforceable consent decree. The EPA believes it is appropriate to coordinate these two rulemakings because they both address interstate transport, both will apply to EGUs, and because the States covered by the response to the section 126 petition are a geographical subset of the States covered by CAIR. In today's action, EPA is not proposing to promulgate FIPs for any States not covered by CAIR.

The EPA believes it is appropriate to finalize the FIP in March 2006 on the same schedule as EPA's response to the section 126 petition. Moving quickly to promulgate a FIP is consistent with Congress' intent that attainment occur in these downwind nonattainment areas ''as expeditiously as practicable'' (sections 181(a), 172(a)). The FIP will help ensure that all emissions reductions required by CAIR, and the associated environmental benefits, will be achieved by the CAIR deadlines. In addition, the FIP will ensure that sources in all States covered by CAIR, regardless of whether they are affected by the North Carolina section 126 petition, will be required to achieve emissions reductions at the same time.

By proposing and finalizing the FIP well before the deadline for States to submit their CAIR SIPs, EPA is providing States an additional option for complying with the requirements of CAIR. States planning to adopt the model trading programs contained in the CAIR rule, could accept the FIP and significantly reduce the State resources needed to establish a program to implement the CAIR. Since there are no punitive consequences for States associated with the FIP or the finding of failure to submit SIPs to satisfy section 110(a)(2)(D)(i), some States could avoid much of the time and expense of revising their SIPs to comply with CAIR. Some States, particularly those subject to the NO_X SIP Call, may need to prepare minor SIP revisions regardless of whether they accept the FIP implementing the requirements of CAIR; yet the time and expense involved would be significantly reduced.

The Agency proposes to provide States that are subject to today's proposed Federal requirements with the option to submit abbreviated SIP revisions covering specific elements of the Federal trading programs without submitting full SIP revisions to meet the requirements of CAIR. By proposing to accept such abbreviated SIP revisions, the Agency intends to increase the options available for States to comply with CAIR. A State could choose to retain control of these specific elements of the trading programs, without submitting a full SIP revision to meet the requirements of CAIR. As there are no sanctions associated with the proposed FIP, EPA anticipates that some States may prefer to avoid spending the time and money necessary to submit a full SIP revision.

The Agency would accept abbreviated SIP revisions for any or all of the following 4 specific elements of the Federal trading programs: (1) Provisions for non-EGUs to opt-in to the Federal trading programs, (2) allocating annual and/or ozone season NO_X allowances to individual sources in the State, (3) allocating allowances from the annual NO_X Compliance Supplement Pool (CSP) to individual sources in the State, and (4) including NO_X SIP Call trading sources that are not EGUs under CAIR in the Federal CAIR ozone season NO_X cap and trade program. Upon approval of any such SIP revisions, EPA anticipates that the corresponding portions of the FIP for that State would be replaced or their application to sources would be modified.

In offering a framework for abbreviated SIP revisions the Agency anticipates that many States will wish to retain control over the allocation of allowances to sources in their State and may wish to meet their NO_X SIP Call obligations by allowing NO_X budget units (that is, units in the NO_X SIP Call trading program) that are not EGUs under CAIR to participate in the CAIR ozone season trading program.

The EPA requests comment on the proposed option for States to submit abbreviated SIPs covering specific elements of the Federal trading programs. A more complete discussion of the proposed abbreviated SIP provisions is found in Section VI.

Thus, the FIP will increase the options available for a State to comply with CAIR. Through the CAIR rulemaking actions, EPA has provided States with a great deal of data and analyses concerning air quality and control costs, as well as a determination whether upwind sources contribute significantly to downwind nonattainment under section 110(a)(2)(D). The EPA recognizes that States would face great difficulties in developing transport SIPs to meet the requirements of section 110(a)(2)(D) without these data and policies. Indeed, EPA acknowledged in the CAIR that the Agency's extensive analyses and data, including the multi-year operation of a federally-funded monitoring system (and the considerable information generated through that system) was a necessary element in the Agency's conclusion that it was appropriate to impose such requirements on States (70 FR 25267).

States have 18 months from the signature date of the CAIR, or until September 11, 2006, to develop, adopt, and submit revisions to their SIPs that meet the requirements of CAIR. We remain ready to work with the States to develop fully approvable SIPs. The FIP will not be promulgated for any State that has an approved SIP implementing the CAIR requirements in place prior to promulgation of the FIP. In addition, EPA will withdraw the FIP for any State once EPA approves a SIP that meets the CAIR requirements in that State.

Having the FIP in place early will provide for a transition to a CAIR trading program with the greatest continuity, administrative ease, and cost savings for States that would otherwise develop a program identical to the model trading program. The EPA's goal is to have approvable programs in place that meet the requirements of the CAIR whether they are in the form of a SIP or a FIP. By finalizing a FIP, EPA would in no way preclude a State from developing its own SIP to either adopt the trading rule with any discretionary elements allowed by the CAIR, or to meeting the State emissions budget through different measures of the State's choosing. The EPA will carefully consider the timing of each element of the FIP process to make sure to preserve each State's freedom to develop and implement SIPs. In this way, EPA will enhance each State's options for complying with the requirements of the CAIR while ensuring that all the emissions reductions and environmental benefits of the CAIR are realized.

C. What Are the FIP Control Measures?

In contrast to the SIP process—where selection and implementation of control measures is the primary responsibility of the State—in the case of a FIP, it is EPA's responsibility to select the control measures for sources and assure compliance with those measures. Thus, while the FIP would be designed by EPA to achieve the same total emissions reductions described in the CAIR, the specific control measures assigned in the FIP could be different from what a State might choose.

In selecting the control measures for the FIP, EPA is proposing the same measures used in the CAIR for calculating the required emissions reductions. In the CAIR, EPA is requiring States to achieve specified levels of emissions reductions based on levels that are achievable through implementation of highly cost-effective controls on EGUs. See the discussion in section IV of the CAIR, ''What Amounts of SO_2 and NO_X Emissions Did EPA Determine Should Be Reduced?'' The EPA is including by reference the technical basis and supporting rationale for EPA's conclusions as to the highly cost-effective strategy developed for the CAIR.

The SO_2 and NO_X cap and trade programs for the FIP are discussed below in section VI. The unit allocations will be provided in a later action and will meet the State EGU budgets that are established in the CAIR for States that choose to meet the required emissions reductions by controlling EGUs only.

D. When and How Would EPA Remove the FIP Requirements if EPA Approves a SIP To Meet the CAIR?

As discussed previously, EPA intends to finalize the FIP by March 15, 2006, concurrently with EPA's response to the section 126 petition from North Carolina. The EPA intends to withdraw the FIP in a State in coordination with EPA's approval of a SIP for that State that meets the CAIR requirements. It is EPA's preference that States regulate sources to control the interstate transport, therefore EPA will work with States to help ensure that the FIP would not need to be implemented. The EPA's intended process for withdrawing the FIP or section 126 requirements is discussed above under section III.D.

V. Emission Reduction Requirements for the Proposed CAIR FIP and Proposed Section 126 Response

A. Overview of Emission Reduction Requirements

In the CAIR (70 FR 25162), EPA determined that SO_2 and NO_X emissions from sources in the District of Columbia and the following 23 States contribute significantly to downwind $PM_{2.5}$ nonattainment: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

In the CAIR, the Agency also determined that the District of Columbia and the following 25 States contribute significantly to downwind 8-hour ozone nonattainment: Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

The EPA established CAIR annual SO_2 and NO_X emission reduction requirements for States that contribute significantly to downwind $PM_{2.5}$ nonattainment and established ozone season NO_X emission reduction requirements for States that contribute significantly to downwind 8-hour ozone nonattainment. The CAIR requires upwind States to revise their State implementation plans (SIP) to include control measures to reduce emissions of SO_2 and/or NO_X to meet the requirements in CAIR (SO_2 is a precursor to $PM_{2.5}$ formation, and NO_X is a precursor to both ozone and $PM_{2.5}$ formation).

The CAIR requires that the emission reductions be implemented in two phases. The first phase of CAIR NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of CAIR SO_2 reductions starts in 2010 (covering 2010–2014); the second phase of CAIR reductions for both NO_X and SO_2 starts in 2015, covering 2015 and thereafter.

The EPA determined the required amounts of CAIR emission reductions based on the application of highly cost-effective controls on electric generating units (EGUs). The States have flexibility in how to achieve the CAIR emission reductions.[7] The CAIR includes model rules for regionwide EGU emission cap and trade programs, which States can choose to adopt to obtain the required reductions in a flexible and cost-effective manner (the CAIR SIP model trading rules).

Today, EPA is proposing FIPs that are substantively the same as the CAIR SIP model cap and trade programs. The proposed FIPs would achieve the NO_X and SO_2 emission reductions required under the CAIR, by requiring EGUs in the affected States to reduce emissions through participation in Federal CAIR NO_X and SO_2 cap and trade programs. The EPA intends to integrate these Federal trading programs with the model trading programs that States may choose to adopt to meet the CAIR (see section VI.J in this preamble for a discussion of coordination between today's proposed Federal cap and trade programs and CAIR SIP cap and trade programs). The proposed Federal CAIR cap and trade programs would achieve the emission reductions required by CAIR by the deadlines established in that rule, with the same highly cost-effective EGU control measures forming the basis for the emission budgets.

For States affected by the proposed section 126 remedy (see section III for affected States), the Federal CAIR cap and trade programs would achieve the required emission reductions. As explained in section I of this preamble, for sources in States that the Agency found to be contributing significantly to nonattainment or maintenance in North Carolina under CAIR, the Agency is proposing to deny the petition for sources in any such State if, prior to or concurrently with the final section 126 response, EPA promulgates a FIP to address the interstate transport from that State. The Agency is proposing, in the alternative, to grant the petition. The Agency intends to promulgate FIPs concurrently with the final section 126 response.

The regionwide emission reduction requirements and State emission budgets that are the basis for today's proposal were established in the CAIR rulemaking. The EPA is not requesting comment on its determination of the CAIR regionwide emission reduction requirements or State emission budgets, nor is the EPA requesting comment on the CAIR regionwide requirements or State budgets themselves.

On May 12, 2005, the Agency proposed to find that Delaware and New Jersey contribute significantly to downwind $PM_{2.5}$ nonattainment and

[7] The amounts of State-by-State emission reductions required by CAIR are determined based on State EGU emission budgets. Determination of a State's emission reduction requirements depends on the source categories that the State chooses to control and, if the State controls only EGUs, on whether it chooses to participate in the EPA-administered EGU emissions cap and trade programs. See section V in the CAIR NFR preamble (70 FR 25229) as well as the technical support document entitled ''Regional and State SO_2 and NO_X Emissions Budgets,'' March 2005, for detailed discussion of the relationship between CAIR EGU emissions budgets and the State emission reduction requirements. Also see § 51.123 and § 51.124 (70 FR 25319–25333).

thus proposed to require annual SO_2 and NO_X controls in these two States (70 FR 25408). (In the CAIR NFR, the Agency found Delaware and New Jersey to contribute to downwind 8-hour ozone nonattainment but not to downwind $PM_{2.5}$ nonattainment). Based on the proposal to require annual SO_2 and NO_X controls in Delaware and New Jersey, today's FIP proposal includes requirements for annual SO_2 and NO_X control in these two States. The EPA determined these required amounts of emission reductions based on the application of highly cost-effective controls on EGUs, and the proposed FIP would achieve these reductions by requiring EGUs to participate in the Federal CAIR cap and trade programs.

The proposed CAIR FIP would require annual SO_2 and NO_X and ozone season NO_X emission reductions (and the proposed section 126 remedy would require annual SO_2 and NO_X reductions) from EGUs in affected States, through participation in regionwide Federal cap and trade programs. The Agency intends the applicability provisions in today's proposal to be identical to the applicability provisions in the CAIR model cap and trade programs. As discussed elsewhere in today's preamble, the Agency is proposing two revisions to the applicability provisions in the CAIR model cap and trade programs. The applicability provisions that EPA is proposing in today's action for the FIP and section 126 remedy would be identical to the applicability provisions in the CAIR model programs if the two proposed revisions to the applicability provisions in the CAIR model programs are finalized. (See section VI.C in today's preamble for a discussion of the proposed applicability provisions for today's action, and see section VII for the proposed revisions to the applicability provisions in the CAIR model programs.)

In this section, EPA describes the approaches for determining regionwide emission caps and State emission budgets taken in the CAIR rulemaking. In section VI in this preamble, the Agency explains in detail the proposed Federal CAIR cap and trade programs for the CAIR FIP and section 126 response.

In today's action, the Agency is proposing a federally-administered program to meet the CAIR emission reduction requirements on the timeline established in CAIR. Today's proposal does not establish those emission reduction requirements or schedule, which were established by the CAIR rulemaking. Thus, the Agency is not requesting comment on the emission reduction requirements or the schedule for implementing the emissions reductions.

The Agency is taking this action to satisfy the concerns of North Carolina cited in its section 126 petition and to provide a Federal backstop for CAIR where all States may not be able to develop and submit timely, approvable SIP revisions. In no way should the FIP for CAIR be viewed as a sign of any concern about States ultimately making the emission reductions required under CAIR. There are no sanctions associated with these FIPs, and EPA does not intend CAIR FIPs to have any other negative consequences for the affected States. To the contrary, EPA is proposing FIP approaches that are flexible and allow States a full opportunity to get their SIP revisions in place, with minimal disruption in transitioning from Federal to State implementation.

B. What Is EPA's Approach for Determining Regionwide NO_X and SO_2 Emissions Caps and State Emissions Budgets?

1. Determination of Regionwide Caps for SO_2 and NO_X

In the preamble to the CAIR NFR, the Agency explained how it determined regionwide SO_2 and NO_X emissions caps. See section IV in the CAIR NFR preamble (70 FR 25195–25229). In determining the amounts of SO_2 and NO_X emissions that must be eliminated for compliance with CAIR, EPA evaluated the amounts of SO_2 and NO_X emissions in upwind States that contribute significantly to downwind $PM_{2.5}$ nonattainment and the amounts of NO_X emissions in upwind states that contribute significantly to downwind 8-hour ozone non-attainment. The EPA determined the amounts of emissions that must be reduced to eliminate significant contributions from upwind States, by applying highly cost-effective control measures to EGUs and determining the emissions reductions that would result (70 FR 25195–25229).

EPA used the Integrated Planning Model (IPM) to analyze the cost effectiveness of the CAIR emission reduction requirements.[8] The EPA modeled the cost effectiveness of CAIR assuming interstate emissions trading. While the Agency does not require States to participate in the CAIR SIP regionwide interstate EGU cap and trade programs, we believe it is reasonable to evaluate control costs assuming States choose to participate in such programs since participation will result in less expensive emission reductions. The Agency modeled the CAIR requirements as three regionwide EGU cap and trade programs (an annual SO_2 program, an annual NO_X program, and an ozone season NO_X program). Section IV.A.1 in the CAIR NFR preamble provides more discussion of EPA's cost modeling methodology for the CAIR rulemaking (70 FR 25196–25197). The Agency also evaluated the feasibility of achieving the CAIR emission reduction requirements in the CAIR time-frame, as discussed in section IV.C. in the CAIR NFR preamble (70 FR 25215–25225).

For SO_2, the regionwide annual cap for 2015 and later (the second CAIR phase) is based on a 65 percent reduction of title IV Phase II allowances allocated to units in the 23 States and the District of Columbia that are required by CAIR to implement annual SO_2 controls. The regionwide annual SO_2 cap for the years 2010–2014 (the first CAIR phase) is based on a 50 percent reduction from those same title IV allocation amounts. The EPA determined these regionwide caps to be highly cost effective by analyzing the cost of controlling emissions from EGUs. Details of EPA's analysis are in section IV in the CAIR NFR preamble (70 FR 25195–25229).

Both the annual and the ozone season NO_X regionwide caps were determined by applying uniform NO_X emission rates to recent historic heat input for EGUs in the affected States (23 States and the District of Columbia for annual NO_X, 25 States and the District of Columbia for ozone season NO_X). For 2015 and later (the second CAIR phase), the Agency applied an emission rate of 0.125 lb/mmBtu to recent historic heat input. For the years 2009–2014 (the first CAIR phase) the Agency applied an emission rate of 0.15 lb/mmBtu. The heat input amounts used in these calculations were the highest annual heat input (or ozone season heat input for the ozone season caps) from Acid Rain Program units for any year from 1999 to 2002 for each State. The EPA determined the resulting regionwide caps to be highly cost effective by analyzing the cost of controlling emissions from EGUs. Details of EPA's analysis are in section IV in the CAIR NFR preamble (70 FR 25195–25229).

[8] The IPM is a multiregional, dynamic, deterministic linear programming model of the U.S. electric power sector. The Agency uses IPM to examine costs and, more broadly, analyze the projected impact of environmental policies on the electric power sector in the 48 contiguous States and the District of Columbia.

2. Determination of State by State Emissions Budgets for SO_2 and NO_X

a. Determination of State SO_2 Emissions Budgets

In CAIR, the EPA determined State annual SO_2 emissions budgets for 2015 and later based on a 65 percent reduction from title IV Phase II allowances allocated to units in the affected States and the District of Columbia, and for the years 2010–2014 based on a 50 percent reduction from the title IV allocation amounts. Section V.A.1.a of the CAIR NFR preamble, 70 FR 25229–25230, describes the approach for determining State budgets. The Agency is not inviting comment on the CAIR State SO_2 budgets. The EPA employed the same approach to determining proposed State SO_2 budgets for Delaware and New Jersey in its proposal to include these two States in CAIR for annual SO_2 controls (70 FR 25416).

Today's proposed FIP and section 126 remedy would achieve the required SO_2 emission reductions through a regionwide Federal SO_2 cap and trade program for EGUs. As discussed further in section VI, below, the Federal CAIR SO_2 cap and trade program would rely on title IV allowances, which sources would retire at specified ratios greater than 1-to-1 for compliance with the proposed Federal CAIR program. Congress has already allocated title IV SO_2 allowances to sources in perpetuity. State SO_2 emissions budgets would not affect the distribution of SO_2 allowances and are not directly relevant for today's proposal.

The CAIR State SO_2 budgets were established to provide States flexibility in selecting a control remedy to meet the requirements of CAIR. States can choose to participate in the EPA-administered CAIR SO_2 trading program, in which case sources would comply by retiring title IV allowances at the specified retirement ratios, and the CAIR State SO_2 budgets would not be directly relevant. For States that do not choose to participate in the EPA-administered SO_2 trading program, however, the CAIR State SO_2 budgets are used to determine the State's emission reduction requirements.[9] The EPA determined title IV allowance retirement ratios for the CAIR SIP model SO_2 trading program based on the ratio of the total of all States' CAIR SO_2 budgets (for 2010 and 2015) to the total of such States' title IV Phase II allowance levels.

In the CAIR FIP and 126 remedy, the EPA is proposing to use a Federal SO_2 trading program approach that is substantively identical to the CAIR SIP SO_2 model trading rule and relies on retirement of title IV allowances at the same specified ratios. Thus, State SO_2 emission budgets would not affect the distribution of SO_2 allowances and are not directly relevant for today's proposal.

For further discussion regarding achieving the required SO_2 reductions in today's proposed Federal program through retirement ratios for title IV allowances, see section VI in today's preamble. Also see the CAIR NFR preamble in section V.A.1.c (70 FR 25230) as well as section VII (70 FR 25255–25273).

b. Determination of State Annual and Ozone Season NO_X Emissions Budgets

In CAIR, EPA determined State annual and ozone season NO_X emissions budgets by apportioning the CAIR regionwide annual and ozone season NO_X caps to States based on each State's share of fuel-adjusted average recent historic heat input. For each CAIR State, for each year (1999 through 2002), the Agency summed heat input by fuel type, adjusted the heat input using fuel adjustment factors, and determined the average fuel-adjusted heat input for each State. The fuel adjustment factors that the Agency used to adjust heat input are 1.0 for coal, 0.4 for gas, and 0.6 for oil.

The EPA summed the average adjusted heat inputs for each State in the CAIR region (either the annual NO_X region or the ozone season NO_X region, as appropriate), and divided each State's average adjusted heat input by the regionwide total average adjusted heat input, to determine each State's proportion of the total. The Agency multiplied each State's proportion by the regionwide caps, to determine each State's proportional share of the regionwide caps. The EPA used the same methodology to determine both annual and ozone season NO_X State budgets, except that for annual budgets the annual heat input was used, whereas for ozone season budgets the ozone season heat input was used. (See section V of the CAIR NFR preamble for discussion of the Agency's determination of CAIR State emissions budgets, 70 FR 25229–25233.) The Agency is not inviting comment on the CAIR State annual and ozone season NO_X budgets.

For its proposal to include Delaware and New Jersey in CAIR for annual NO_X controls, the Agency proposed to determine annual State NO_X budgets for these two States by first calculating a total ''regional'' cap for the two States, using the same methodology used in CAIR to develop regionwide NO_X caps (the regionwide NO_X cap methodology is described above). The EPA proposed to determine State annual NO_X budgets for these two States by apportioning the regional Delaware and New Jersey cap back to the two States using the same fuel-adjusted heat input basis as was used in the CAIR NFR, as described above (also see section IV.B. in the proposal to include Delaware and New Jersey in CAIR for $PM_{2.5}$ purposes, 70 FR 25416).

In today's proposed Federal CAIR NO_X cap and trade programs for EGUs, the State annual and ozone season EGU NO_X budgets are the same as the budgets in the CAIR NFR (annual NO_X budgets for Delaware and New Jersey in today's proposal are the same as the annual NO_X budgets for these two States in the proposal to include them in CAIR for $PM_{2.5}$ purposes).

For each State affected by the proposed Federal CAIR NO_X trading programs, the State NO_X budgets are the total amount of allowances[10] that the Agency will allocate to sources in the State. See section VI in this preamble for EPA's proposed methodology for allocating NO_X allowances to affected sources. The EPA's proposed allocation methodology for NO_X allowances in the annual NO_X and the ozone season NO_X cap and trade programs is in contrast with the approach taken in the case of SO_2 allowances, which are already allocated under title IV of the Clean Air Act to sources in perpetuity, as explained above.

C. What Are the State EGU Emission Budgets for the CAIR FIP and the Section 126 Response?

1. What Are the Annual State EGU SO_2 Emissions Budgets?

As explained above, the required SO_2 emission reductions would be achieved solely based on the requirement that sources retire title IV SO_2 allowances (which were already allocated to sources by Congress) at specified ratios greater than 1-to-1. Because State SO_2 emission budgets do not affect the distribution of SO_2 allowances and are

[9] See section V in the CAIR NFR preamble (70 FR 25229–25233) as well as the technical support document entitled ''Regional and State SO_2 and NO_X Emissions Budgets,'' March 2005, for detailed discussion of the relationship between CAIR EGU emissions budgets and the State emission reduction requirements. Also see § 51.123 and § 51.124 (70 FR 25319–25333).

[10] As in CAIR, an annual NO_X allowance would authorize the emission of a ton of NO_X during a calendar year and an ozone season NO_X allowance would authorize the emission of a ton of NO_X during an ozone season. See section VI in this preamble for further discussion and see the proposed regulatory text for definitions.

not directly relevant for today's proposal, the Agency is not including State SO_2 budgets in today's proposal. See section VI in this preamble for discussion of the proposed Federal CAIR SO_2 trading program.

2. What Are the Annual State EGU NO_X Emissions Budgets?

a. For States Affected by the CAIR FIP

For the proposed Federal CAIR annual NO_X cap and trade program, State NO_X emissions budgets—for the 23 States and the District of Columbia that are required by CAIR to control annual NO_X—are provided in Table V–1, below. These annual NO_X budgets are the same as the budgets shown in Table V–2 of the CAIR NFR preamble (70 FR 25231). Table V–1, below, also includes annual NO_X budgets that EPA proposed for Delaware and New Jersey (these are the same budgets that were included in Table IV–1 in ''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule: Proposed Rule'' (70 FR 25416)). See section VI in this preamble for EPA's proposed methodology for allocating annual NO_X allowances to sources in the Federal CAIR cap and trade programs.

TABLE V–1.—CAIR ANNUAL ELECTRIC GENERATING UNITS NO_X BUDGETS

[In tons]

State	State NO_X annual budget 2009–2014	State NO_X annual budget 2015 and thereafter
Alabama	69,020	57,517
Delaware	4,166	3,472
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New Jersey	12,670	10,558
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966
Total	1,521,707	1,268,091

b. For States Affected by the Section 126 Response

For the proposed Federal CAIR annual NO_X cap and trade program—for the ten States affected by the proposed section 126 remedy (see section III in this preamble for affected States)—the annual State NO_X emissions budgets are the same as the budgets shown in Table V–1, above. See section VI in this preamble for EPA's proposed methodology for allocating annual NO_X allowances to sources in the Federal CAIR cap and trade programs.

3. What Are the Ozone Season EGU NO_X Emissions Budgets?

a. For States Affected by the CAIR FIP

For the proposed Federal CAIR ozone season NO_X cap and trade program, State EGU NO_X emissions budgets—for the 25 States and the District of Columbia that are required to control ozone season NO_X—are shown by State in Table V–2, below. These ozone season budgets are identical to the budgets in Table V–4 in the CAIR NFR preamble (70 FR 25233). See section VI in this preamble for EPA's proposed methodology for allocating ozone season NO_X allowances to individual sources for the Federal CAIR ozone season NO_X cap and trade program.

TABLE V–2.—CAIR OZONE SEASON ELECTRICITY GENERATING UNIT NO_X BUDGETS

[In tons]

State*	State NO_X Ozone season budget 2009–2014	State NO_X Ozone season budget 2015 and thereafter
Alabama	32,182	26,818

TABLE V–2.—CAIR OZONE SEASON ELECTRICITY GENERATING UNIT NO_X BUDGETS—Continued

[In tons]

State*	State NO_X Ozone season budget 2009–2014	State NO_X Ozone season budget 2015 and thereafter
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989
CAIR Region Total	567,744	484,506

*For States that have lower EGU budgets under the NO_X SIP Call than their 2009 CAIR budget, table V–2 includes their SIP Call budget. For Connecticut, the NO_X SIP Call budget is also used for 2015 and beyond.

b. For States Affected by the Section 126 Response

As explained in section III in this preamble, the EPA is proposing to deny the ozone portion of the section 126 petition. Therefore, the Agency is not proposing ozone season NO_X State budgets for purposes of the section 126 remedy.

4. What Are the Amounts of Allowances Available in the State Annual NO_X Compliance Supplement Pools?

The CAIR established State Compliance Supplement Pools (CSP) of annual NO_X allowances of vintage 2009. Under CAIR, a State that elects to achieve its CAIR annual NO_X reduction requirements by creating an annual NO_X cap and trade program can allocate CSP allowances (using mechanisms specified in CAIR) to its sources for use in complying with such an annual NO_X program (see section VII in the CAIR NFR preamble for discussion, 70 FR 25255–25273).

Today's proposed Federal CAIR annual NO_X cap and trade program includes the same State CSP amounts as were established in CAIR. See section V in the CAIR NFR preamble (70 FR 25231–25232), as well as the technical support document entitled ''Regional and State SO_2 and NO_X Emissions Budgets,'' March 2005 (in the CAIR docket) for discussion of the Agency's process for determining the annual NO_X CSP amounts for each CAIR State. The Agency is not inviting comment on the CSPs established in CAIR.

For the proposed Federal CAIR annual NO_X cap and trade program, the CSP amount for each State is provided in Table V–3, below. These are the same CSP amounts as shown in the CAIR NFR preamble, Table V–3 (70 FR 25232). The CSP amounts for Delaware and New Jersey—if these two States are part of the final CAIR annual NO_X requirements as the Agency has proposed—are also shown in Table V–3 below, as well as in Table V–3 in the CAIR NFR preamble (70 FR 25232) and in Table IV–3 in ''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule: Proposed Rule'' (70 FR 25417). See section VI in this preamble for EPA's proposed methodology for allocating CSP allowances to sources for the Federal CAIR annual NO_X cap and trade program.

TABLE V–3.—CAIR ANNUAL NO_X COMPLIANCE SUPPLEMENT POOLS

[In tons]

State	Compliance supplement pool
Alabama	10,166
Delaware	843
District of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New Jersey	660
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898

TABLE V–3.—CAIR ANNUAL NO_X COMPLIANCE SUPPLEMENT POOLS—Continued

[In tons]

State	Compliance supplement pool
Total	199,997

VI. Proposed Federal CAIR NO_X and SO_2 Cap and Trade Programs for EGUs

A. Purpose of Federal CAIR NO_X and SO_2 Cap and Trade Programs and Relationship to the Section 126 Petition and the CAIR

In today's action, EPA is proposing Federal CAIR NO_X and SO_2 cap and trade programs for EGUs as the control remedy for both the CAIR FIP and the section 126 response, should EPA make any section 126(b) findings (see section VI.C., below, for applicability provisions).

The Agency is proposing regulatory text for the CAIR FIP rules in today's action. Regulatory text for the section 126 remedy would be largely the same. The proposed new Federal NO_X and SO_2 cap and trade programs will be located in part 97 in title 40 of the CFR.

The Agency proposes three separate Federal CAIR cap and trade programs: (1) SO_2; (2) NO_X; and (3) ozone season NO_X. Emissions cap and trade programs are a proven method for achieving highly cost-effective emissions reductions while providing regulated sources of emissions with flexibility in adopting compliance strategies.

Participation in the proposed Federal CAIR NO_X and SO_2 cap and trade programs would be mandatory for all sources covered by the final CAIR FIP or by a final section 126(b) finding in response to the North Carolina petition. Note that, as discussed in section I in today's preamble, EPA is proposing to deny the section 126 petition with respect to the 8-hour ozone NAAQS, therefore the section 126 remedy would not include an ozone season NO_X program.

The emission sources that the Agency is proposing to include in the Federal CAIR NO_X and SO_2 cap and trade programs—EGUs fitting the applicability requirements described in section VI.C, below—are the same types of sources included in the CAIR NO_X Annual Trading Program, CAIR NO_X Ozone Season Trading Program, and CAIR SO_2 Trading Program (contained in part 96) that EPA promulgated as model trading rules that States may elect to use in responding to the CAIR. The emission sources identified in today's proposal are the sources for which EPA assumed emission reductions in determining the regionwide emission reduction requirements and calculating the State emission budgets in CAIR. (As discussed in section VII, below, EPA is proposing certain revisions clarifying the EGU definition in CAIR, and the proposed applicability provisions in the Federal CAIR trading programs are consistent with those proposed revisions.)

The CAIR established State EGU emissions budgets that each State would use to determine its required emissions reductions. The proposed Federal CAIR cap and trade programs set specific rules for EGUs to decrease NO_X and SO_2 emissions sufficiently to achieve emission reductions that are required under CAIR. The proposed section 126 remedy is limited to the set of States that North Carolina named in its petition and for which EPA makes a positive determination (see section III, above). The named States are a geographic subset of the CAIR States. Each of the three actions—the CAIR, the proposed CAIR FIP, and the proposed section 126 remedy—aim to reduce the transport of $PM_{2.5}$ precursors by controlling emissions from sources in a given State that are found to be contributing significantly to nonattainment and maintenance in another State. The CAIR and the proposed CAIR FIP also aim to reduce transport of ozone precursors by controlling emissions from sources in a given State that are found to be contributing significantly to nonattainment and maintenance in another State.

The EPA intends that if States choose to meet their emission reduction obligations under CAIR by adopting the SIP model cap and trade rules and participating in the EPA administered trading programs, such participation will be fully integrated with Federal CAIR NO_X and SO_2 cap and programs that EPA may promulgate in a final FIP or in a final section 126 response. Integration is possible because, as noted above, the CAIR, a corresponding FIP, and the section 126 remedy all seek to mitigate transport of emissions from upwind sources that significantly contribute to downwind nonattainment of the $PM_{2.5}$ NAAQS, and the CAIR and a corresponding FIP both seek to mitigate such transport with regard to the 8-hour ozone NAAQS. Further, the sources covered in the CAIR SIP model cap and trade programs are the same types of sources named in the section 126 petition (except that the petition names a subset of the States affected by CAIR), and are the same as the sources that EPA proposes to regulate in the proposed FIP and section 126 remedy.

In order to be eligible to participate in an emissions cap and trade program, the Agency believes that there are two principal criteria that sources must meet, as stated in the supplemental proposal for the NO_X SIP Call (62 FR 25923). The first criterion requires that sources be able to account accurately and consistently for all of their emissions to ensure the trading program goal of maintaining emissions within a cap. Emissions monitoring must be accurate and consistent among all sources so that each allowance represents the same amount of emissions. The second criterion for participation in a trading program is the ability to identify a responsible party for each regulated source who would be accountable for demonstrating and ensuring compliance with the program's provisions. The EPA believes that today's proposed rule meets those criteria. The Agency also believes that, because today's proposal contains the same mandatory program elements as are in the part 96 CAIR SIP model trading programs, and is designed to meet the same environmental goals and caps sources at the same levels as those model trading programs, it is appropriate to design CAIR FIP and section 126 trading programs that are integrated with the CAIR SIP trading programs.

Under this scenario of common trading programs (*i.e.*, integrated FIP-section 126–SIP for NO_X annual, NO_X ozone season, and SO_2 trading programs), sources subject to Federal CAIR trading programs under the FIP or the section 126 remedy, and sources in States choosing to participate in the EPA-administered CAIR SIP trading programs could trade allowances with one another under common emissions caps across participating States. Integration of the trading programs reduces the possibility of inconsistent or conflicting deadlines or requirements, increases the potential cost savings for sources, and streamlines program administration. Unnecessary inconsistency in trading programs could hamper sources' ability to plan and achieve the needed reductions as cost effectively as possible. In addition, if a State submitted a SIP including CAIR EPA-administered emissions trading programs after EPA had established Federal programs under a FIP or section 126 response, disruptions to sources that would shift from regulation under a FIP or section 126 remedy to regulation under a SIP would be minimized.

The EPA proposes, in part 97, to establish the geographic boundaries of the common trading programs as those States submitting SIPs in response to the CAIR, or subject to FIPs, and/or the sources in States for which EPA makes a positive finding for the section 126 petition. The EPA would administer these common trading programs in collaboration with affected States.

Today, the Agency proposes Federal CAIR NO_X and SO_2 cap and trade programs for the FIP or section 126 remedy that are virtually the same as the CAIR SIP model trading programs (which are the model trading programs that States may choose to adopt in response to CAIR). Although EPA intends the proposed Federal CAIR cap and trade programs to be as similar as possible to the CAIR SIP model trading rules, the Agency is proposing certain differences as described below. The differences arise primarily from the need for Federal implementation of the programs rather than State implementation and to facilitate transfer from Federal to State-implemented programs. For example, under today's proposal, the Agency determines NO_X allowance allocations for each unit in the Federal CAIR annual and ozone season NO_X cap and trade programs, rather than EPA simply providing a recommended methodology for States to use to determine allocations in CAIR SIP NO_X trading programs. Note that today's proposed Federal CAIR cap and trade programs include all of the mandatory elements that States are required to include in their SIPs in order to participate in the EPA-administered cap and trade programs for CAIR.

As noted in section IV in this preamble, the Agency proposes to provide States that are subject to today's proposed Federal requirements with the option to submit abbreviated SIP revisions covering specific elements of the Federal trading programs without submitting full SIP revisions to meet the requirements of CAIR. The Agency would accept abbreviated SIP revisions for the following 4 specific elements of the Federal trading programs: (1) Provisions for non-EGUs to opt-in to the Federal trading programs, (2) allocating annual and/or ozone season NO_X allowances to individual sources in the State, (3) allocating allowances from the annual NO_X Compliance Supplement Pool (CSP) to individual sources in the State, and (4) including NO_X SIP Call trading sources that are not EGUs under CAIR in the Federal CAIR ozone season NO_X cap and trade program. The Agency discusses each of these elements further below.

By proposing to accept such abbreviated SIP revisions, the Agency intends to increase the options available for States to comply with CAIR. A State could choose to retain control of these specific elements of the trading programs, without submitting a full SIP revision to meet the requirements of CAIR.

As explained in the CAIR NFR, States have until September 11, 2006 to submit to the Agency revisions to their SIPs that meet the requirements of CAIR. The Agency proposes that, for abbreviated SIP revisions addressing the specific elements identified in today's proposal, States have until March 31, 2007 to make their submissions. The EPA proposes to allow States to submit abbreviated SIP revisions later than full revisions because the Agency anticipates that we will be able to complete the approval process more quickly for abbreviated SIP revisions due to their narrower scope. If States submit approvable full or abbreviated SIP revisions by these dates, the Agency believes it will be able to approve the revisions in time to record State NO_X allocations in source accounts by December 2007 for the first NO_X control period for any State submitting revisions that include NO_X allocations. See section VI.D. in this preamble for a detailed discussion of timing considerations with respect to NO_X allocations.

The Agency proposes to include appendices in part 97 that will list any States with approved abbreviated SIP revisions covering non-EGUs opt-ins, allocating NO_X allowances, distributing CSP allowances, or including non-CAIR NO_X SIP Call trading sources in the Federal CAIR ozone season NO_X trading program.

The EPA requests comment on the proposed option for States to submit abbreviated SIPs covering specific elements of the Federal trading programs.

B. Overall Structure of the Proposed Federal CAIR Cap and Trade Programs

In the CAIR NFR, the Agency provided model rules for the CAIR NO_X, CAIR ozone season NO_X, and CAIR SO_2 trading programs that States can use to meet the emission reduction requirements in the CAIR (in part 96). The proposed Federal CAIR cap and trade programs are based on these model rules. The EPA designed these rules to be similar to the NO_X SIP Call model trading rules (also in part 96) and to coordinate with the Acid Rain Program.

The Agency proposes in today's action that the mandated emission reductions will be achieved from EGUs (see section VI.C, below, for discussion of proposed applicability provisions). Descriptions of each of the proposed Federal CAIR cap and trade programs (*i.e.*, the SO_2 program, NO_X annual program, and NO_X ozone season program) are presented below.

The proposed Federal CAIR cap and trade programs rely on the detailed unit-level emissions monitoring and reporting procedures of part 75 and consistent allowance management practices. All affected sources would be required to monitor and report their emissions using part 75. Source information management, emissions data reporting, and allowance trading would be accomplished using on-line systems similar to those currently used for the Acid Rain SO_2 and NO_X SIP Call Programs.

Penalty provisions for excess emissions under the CAIR SIP model trading programs are described in the CAIR NFR preamble (70 FR 25274). The Agency intends the penalty provisions for excess emissions in today's proposal to be identical to the provisions in the CAIR. As discussed in section VII in today's preamble, the Agency is proposing revisions to the excess emission penalties in the CAIR SO_2 trading program to clarify the penalties for units that have excess emissions under both the Acid Rain Program and the CAIR SO_2 trading program. The excess emissions penalty provisions in today's proposed Federal NO_X and SO_2 cap and trade programs would be identical to the penalty provisions in the CAIR if the proposed revisions to the CAIR SO_2 trading program penalties are finalized.

1. SO_2 Program

The proposed Federal CAIR SO_2 cap and trade program would require affected sources to hold SO_2 allowances sufficient to cover their emissions for each control period. This proposed program is based on the existing Acid Rain Program and would rely on title IV SO_2 allowances, in the same way that the CAIR SO_2 model trading rule relies on title IV allowances.

As in the CAIR SIP SO_2 model trading program, SO_2 reductions for the Federal CAIR SO_2 cap and trade program would be achieved by requiring sources to retire, in most cases, more than one title IV allowance for each ton of SO_2 emissions. Sources could use pre-2010 title IV SO_2 allowances for compliance with the Federal CAIR SO_2 cap and trade program at a 1-to-1 ratio (i.e., SO_2 allowances of vintage 2009 and earlier would offset one ton of SO_2 emissions). Allowances of vintages 2010 through

2014 would offset 0.5 tons of emissions (i.e., such allowances would need to be retired at a ratio of 2-to-1 for CAIR compliance, in other words 2 allowances for every ton of emissions). Allowances of vintages 2015 and beyond would offset 0.35 tons of emissions (i.e., such allowances would need to be retired at a ratio of 2.86-to-1, in other words 2.86 allowances for every ton of emissions). Thus, the emission value of an SO_2 allowance would be independent of the year in which it is used, but rather would be based on its vintage (i.e., the year in which the allowance is issued). These SO_2 allowance retirement ratios are identical to the retirement ratios in the CAIR NFR (see discussion in section VII in the CAIR NFR preamble at 70 FR 25255–25273, as well as in section IX at 70 FR 25290–25291).

The Agency proposes to use the single term, ''CAIR SO_2 allowance'' to refer to an SO_2 allowance under a CAIR SIP, CAIR FIP, or section 126 response.[11] A CAIR SO_2 allowance could be used for compliance with the SO_2 allowance-holding requirement in a CAIR SIP, CAIR FIP, or section 126 SO_2 trading program. Sources in States governed by any of these three SO_2 trading programs could trade CAIR SO_2 allowances with each other.The CAIR SIP SO_2 model trading rule (upon which the proposed Federal CAIR SO_2 program is based) is included in subparts AAA through III of part 96 (70 FR 25362–25382). Section VIII in the CAIR NFR preamble describes the CAIR model cap and trade programs (70 FR 25273–25289).

2. NO_X Program

The proposed Federal CAIR annual NO_X cap and trade program would require affected sources to hold annual NO_X allowances sufficient to cover their emissions for each control period. The proposed program would rely on CAIR annual NO_X allowances that would be allocated to affected sources by the EPA (see section VI.D. for the Agency's proposed NO_X allocation methodology). As in CAIR, an annual NO_X allowance would authorize the emission of one ton of NO_X (see the proposed regulatory text for definitions).

As in the CAIR annual NO_X program, the Agency is proposing a Compliance Supplement Pool (CSP) of allowances that would be allocated to sources and could then be used for compliance with the Federal CAIR annual NO_X cap and trade program. As explained in the CAIR NFR, the Agency apportioned a regionwide pool of about 200,000 CSP allowances to the CAIR States (see 70 FR 25231–25232). Those State CSP amounts are provided in Table V–3 in this preamble. The Agency is not inviting comment on the apportionment of CSP allowances as determined in CAIR.

For the Federal annual NO_X cap and trade program in today's action, the Agency proposes that, for each affected State, we would allocate to sources in that State an amount of CSP allowances up to the amount that was apportioned to the State in CAIR. The Agency's proposed methodology to allocate CSP allowances to sources is described below, in section VI.D.

The Agency proposes that ozone season NO_X allowances issued under the NO_X SIP Call or under the Federal CAIR ozone season cap and trade program could not be used for compliance with the Federal CAIR annual NO_X reduction requirement (which is the same restriction as in the CAIR SIP model trading rules).

The Agency proposes to use the single term, ''CAIR NO_X allowance'' to refer to a NO_X allowance issued under a CAIR SIP, CAIR FIP, or section 126 response. A CAIR NO_X allowance could be used for compliance in a CAIR SIP, CAIR FIP, or section 126 NO_X trading program. Sources in States governed by any of these three annual NO_X trading programs could trade CAIR NO_X allowances with each other.

The CAIR SIP NO_X annual model trading rule (upon which the proposed Federal CAIR NO_X annual program is based) is included in subparts AA through II of part 96 (70 FR 25339–25362). Section VIII in the CAIR NFR preamble describes the CAIR model cap and trade programs (70 FR 25273–25289).

3. Ozone Season NO_X Program

The proposed Federal CAIR ozone season NO_X cap and trade program would require affected sources to hold CAIR ozone season NO_X allowances sufficient to cover their emissions for each control period. For the proposed ozone season program, the control period would extend from May 1 through September 30 for each year of the program. As in CAIR, a NO_X ozone season allowance would authorize the emission of one ton of NO_X during the ozone season (see the proposed regulatory text for definitions).

The proposed program would rely on CAIR ozone season NO_X allowances that would be allocated to affected sources by the EPA (see section VI.D. for the Agency's proposed NO_X allocation methodology). In addition, pre-2009 NO_X SIP Call allowances could be banked into the proposed Federal CAIR ozone season NO_X program and used by affected sources for compliance with that program. The Agency proposes that NO_X allowances issued under the Federal CAIR annual NO_X program could not be used for compliance with the Federal CAIR ozone season NO_X reduction requirement (which is the same restriction as in the CAIR SIP model trading rules).

As discussed in the CAIR NFR, certain emissions sources that do not fit the applicability requirements of CAIR are included in the existing EPA-administered NO_X Budget Trading Program under the NO_X SIP Call. (The types of NO_X Budget Trading Program units that are not EGUs under CAIR include industrial boilers and turbines, cement kilns, and small EGUs.) As explained in the CAIR NFR, EPA will no longer administer the NO_X SIP Call ozone season cap and trade program after the 2008 ozone season (see 70 FR 25290). The CAIR NFR provides that States that choose to participate in the CAIR EPA-administered ozone season NO_X cap and trade program may choose whether or not to bring their non-CAIR NO_X SIP Call trading sources into the CAIR ozone season trading program, through their SIP revision. See section VII in the CAIR NFR (70 FR 25255–25273) and section IX.A. (70 FR 25289–25290).

As discussed above, the Agency is proposing that States may choose to submit an abbreviated SIP revision to bring their non-CAIR NO_X SIP Call trading sources into the proposed Federal CAIR ozone season NO_X cap and trade program. The abbreviated SIP revision would increase a State's ozone season NO_X trading budget under the proposed Federal CAIR ozone season NO_X cap and trade program by an amount equal to the portion of the State's NO_X SIP Call State trading budget that is attributed to such units.

The Agency proposes to use the single term, ''CAIR Ozone Season NO_X allowance'' to refer to an ozone season NO_X allowance issued under a CAIR SIP or CAIR FIP. A CAIR ozone season NO_X allowance could be used for compliance in a CAIR SIP or CAIR FIP ozone season NO_X trading program. Sources in States governed by either of these ozone season NO_X trading programs could trade CAIR Ozone Season NO_X allowances with each other.

The CAIR SIP NO_X ozone season model trading rule, upon which the proposed Federal CAIR NO_X ozone

[11] A CAIR SO_2 allowance is a title IV SO_2 allowance. For purposes of compliance with the EPA-administered SIP SO_2 trading program or with the Federal SO_2 trading program in today's proposal, the value of such SO_2 allowances are discounted based on the allowance vintage year, as explained above.

season program is based, is included in subparts AAAA through IIII of part 96 (70 FR 25382–25405). Section VIII in the CAIR NFR preamble describes the CAIR model cap and trade programs (70 FR 25273–25289).

C. Sources Affected Under the Proposed Federal CAIR Cap and Trade Programs

Under the proposed Federal CAIR cap and trade programs, only EGUs are subject to the proposed rules. The Agency intends the applicability provisions for the proposed Federal CAIR trading programs to be identical to the applicability provisions for the CAIR SIP model trading programs.

In today's action, the Agency is proposing two revisions to the applicability provisions that were finalized in the CAIR SIP model trading rules (see section VIII.C. in the CAIR NFR preamble for applicability discussion at 70 FR 25276–25278 and see section VII in today's preamble for proposed changes to the CAIR EGU definition). The applicability provisions in today's proposed Federal CAIR trading programs are identical to the applicability provisions that would apply for CAIR if the Agency finalizes its proposed revisions to the CAIR model trading rules.

The proposed revisions to the applicability provisions in CAIR are intended to provide clarity and also to align the provisions more closely with the provisions in the title IV Acid Rain Program. The proposed revisions include adding an exemption for certain solid waste incinerators and exempting existing units that have not served a generator since before November 15, 1990. Each of these revisions is discussed below.

The status of solid waste incinerators under the CAIR as finalized is unclear. The Agency proposes a revision to the applicability provisions that would establish a specific exemption for certain solid waste incinerators. In the CAIR NFR, the Agency applied the CAIR model trading programs to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine 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 (with exclusions for certain cogeneration units). Under the current definition, units would be considered fossil-fuel-fired if they burned any fossil fuel. Because solid waste incinerators usually use fossil fuel, at least to start up, and because they may burn fossil-fuel derived products (such as tires), they are often considered fossil-fuel-fired. Therefore, to the extent that such incinerators are connected to a generator of capacity greater than 25 MWe that generated electricity for sale, they would be considered affected units under CAIR. However, in the record for the CAIR, EPA stated that the CAIR requirements do not reflect any emission reductions from solid waste incinerators [12]. Therefore, the EPA is proposing an exemption for certain solid waste incinerators. The proposed exemption is analogous to an exemption for such units under the Acid Rain Program. The Agency proposes this exemption as a revision to the applicability provisions in the CAIR and proposes the identical exemption for the Federal CAIR trading programs.

In addition, the status, under CAIR, of units that formerly generated electricity for sale but stopped doing so many years ago warrants further clarification. As finalized in CAIR, the applicability provisions include units serving ''* * * at any time, since the start-up of the unit's combustion chamber, a generator * * *'' The Agency is proposing to revise the applicability provisions to exempt existing units that have not served a generator since before November 15, 1990. This proposed exemption is analogous to the approach under the Acid Rain Program. The Agency proposes this exemption as a revision to the applicability provisions in the CAIR and proposes the identical exemption for the Federal CAIR trading programs.

The Agency proposes that, in any jurisdiction for which a final CAIR FIP or section 126 response is promulgated, the following units will be subject to the Federal CAIR trading programs (*i.e.*, to the Federal CAIR SO_2, NO_X annual, or NO_X ozone season programs, as appropriate).

Except for a unit that qualifies as a cogeneration unit or a solid waste incinerator (see below), an affected unit is any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

Cogeneration Unit Exemption

As in the CAIR NFR, certain cogeneration units would be exempt from the proposed Federal CAIR cap and trade programs. Cogeneration units include 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 and efficiency standards. The program has different applicability provisions for non-cogeneration units and cogeneration units. Any cogeneration unit, serving (since the later of November 15, 1990 or the start-up of the unit), a generator with a nameplate capacity of greater than 25 MW and supplying more than 1/3 potential electric output capacity and more than 219,000 MW-hrs annually to any utility power distribution system for sale, would be subject to the requirements of the proposed Federal CAIR trading rules. Otherwise, the unit would qualify for an exemption under the Federal rules. This cogeneration unit exemption is identical to the exemption in the CAIR NFR. (Note that some language to clarify application of the exemption is proposed for the CAIR SIP trading programs and the same language is also included in the proposed Federal trading programs.) Section VIII.C.3. of the CAIR NFR preamble describes the cogeneration unit exemption and discusses the specific elements of how units would qualify and remain qualified for the exemption (70 FR 25276–25278).

Solid Waste Incinerator Exemption

As explained above, the Agency is proposing today to provide an exemption for certain solid waste incinerators in the Federal CAIR cap and trade programs and to revise the provisions in the CAIR to exempt certain solid waste incinerators.

Specifically, the Agency proposes that, for a solid waste incineration unit commencing operation before January 1, 1985, for which the average annual fuel consumption of non-fossil fuels during 1985–1987 exceeded 80 percent and during any 3 consecutive calendar years after 1990 the average annual fuel consumption of non-fossil fuels exceeds 80 percent, the unit is not subject to the Federal CAIR cap and trade programs.

The Agency also proposes that, for a solid waste incineration unit commencing operation on or after January 1, 1985, for which the average annual fuel consumption of non-fossil fuels for the first 3 calendar years of operation exceeds 80 percent and during any 3 consecutive calendar years after 1990 the average annual fuel consumption of non-fossil fuels exceeds 80 percent, the unit is not subject to the Federal CAIR cap and trade programs.

[12] ''Corrected Response to Significant Public Comments on the Proposed Clean Air Interstate Rule,'' April 2005, Docket # OAR–2003–0053–2172.

Individual Unit Opt-Ins

Today's proposal includes provisions for individual units to opt-in to the Federal CAIR trading programs. However, EPA proposes that those provisions would become applicable to sources in a given State only if the State chooses to submit an abbreviated SIP revision that would provide for the inclusion of non-EGU opt-ins in the Federal CAIR trading programs.

The CAIR final rule includes provisions for individual unit opt-ins in the CAIR SIP model trading programs. As discussed in CAIR, States choosing to participate in the EPA-administered CAIR trading programs can choose whether or not to include opt-in provisions in their CAIR SIP revisions. If States choose to include opt-in provisions, they must include the provisions provided in the CAIR SIP model trading rules.

The Agency generally believes that States should have the option of including provisions for individual unit opt-ins in the CAIR SIP trading programs. The EPA considered requiring all States to have opt-in provision in the proposed Federal CAIR trading programs. By not requiring opt-in provisions in all States covered by the proposed Federal trading programs, the Agency seeks to preserve the States' flexibility to decide whether to allow opt-in units.

If EPA were to implement Federal CAIR trading programs with required provisions allowing individual units to opt-in, then some units may opt-in to the Federal programs. If the Agency subsequently approved a CAIR SIP revision that did not include opt-in provisions, then any units in the affected State that had opted-in under the Federal programs would be stranded. Such units would likely have made decisions—such as to install emission control equipment—based on participation in a trading program in which they would no longer be able to participate. The alternative to stranding such units would be for a State that would not otherwise choose to implement the opt-in provisions to implement such provisions at least for the past opt-in units. Thus, in order to preserve States' flexibility with regard to opt-ins the Agency does not propose to require the opt-in provisions to apply in all States under the Federal CAIR trading programs, but proposes that each State have the option of activating the opt-in provisions in the Federal CAIR programs through an abbreviated SIP revision.

The Agency proposes that if States choose to submit abbreviated SIP revisions to provide for the inclusion of non-EGU opt-ins in the Federal CAIR trading programs, the SIP revisions must include the opt-in provisions that are provided in the CAIR final rule. See section VIII.G. in the CAIR NFR preamble for discussion of opt-in provisions (70 FR 25286–25288).

D. Allocation of NO_X Emission Allowances to Sources

For States that choose under CAIR to participate in the EPA-administered annual and/or ozone season NO_X cap and trade programs (adopting the CAIR SIP model trading rules), the EPA provided in the CAIR NFR an example methodology for allocating NO_X allowances to individual sources. See section VIII.D. of the CAIR NFR preamble (70 FR 25278–25282).

For the Federal CAIR NO_X cap and trade programs, the Agency is proposing to use a NO_X allocation methodology that is consistent with the CAIR SIP model trading rules. Within each affected State, the Agency would allocate (i.e., distribute) to sources a total amount of allowances authorizing an emissions tonnage that equals the State's NO_X budget. The Agency's proposed NO_X allocation methodology is described below.

Timing of NO_X Allocations

For the reasons discussed in section IV in today's preamble, the EPA intends to finalize a CAIR FIP in March 2006. By finalizing a FIP, the EPA would in no way preclude a State from developing its own SIP either to adopt the CAIR model trading rules (with any discretionary elements allowed by the CAIR rule, including allocation of unit-by-unit NO_X allowances) or to meet the CAIR emission reduction requirements through different measures of the State's choosing.

The Agency's preference is for States to make decisions about NO_X allocations for their sources. The EPA intends to determine Federal unit-by-unit NO_X allocations (with opportunity for public comment). However, we intend to only record those Federal allocations in allowance accounts for sources located in a State without a timely, approved CAIR SIP (or timely, approved abbreviated CAIR SIP revision providing for State allocations).

In considering when to record Federal NO_X allocations in source accounts, the Agency seeks to balance the following two goals: (1) To provide certainty to sources regarding their CAIR NO_X allocations and time for sources to make compliance decisions, and (2) to provide States choosing to allocate CAIR NO_X allowances with time to do so and EPA with time to approve SIP revisions that include State allocations. Taking into consideration the CAIR SIP submittal dates (for full or abbreviated revisions), the amount of time needed by the Agency to approve SIP revisions, and the amount of time remaining before the initial CAIR control period, the EPA developed a proposed schedule for recording NO_X allocations in source accounts. The Agency's proposed NO_X allocation schedule is presented below. The EPA seeks comment on this proposed schedule.

The Agency will endeavor to work with States to ensure that we can approve SIP revisions and record State NO_X allocations in source accounts. The EPA intends to act in such a way that, once Federal NO_X allocations are recorded for a particular control period (which would only occur in the absence of a timely, approved full CAIR SIP revision, or timely, approved abbreviated CAIR SIP revision containing allocations), we would not approve overlapping State allocations for that same control period.[13] Rather, EPA will work with the States to approve SIP revisions with State allocations for control periods that begin upon the expiration of a control period for which Federal allocations have been recorded in source accounts. It would be highly disruptive to the allowance market if Federal allocations that had been recorded and traded on the market could subsequently be rendered invalid due to approval of overlapping State allocations for the same control period.

The discussion in this section is focused on the timing for recordation of Federal allocations in coordination with approval of SIP revisions and recordation of State allocations—assuming States choose to participate in the EPA-administered CAIR NO_X trading programs. The Agency would also carefully consider the timing of a transition from Federal to State-implemented programs for any State choosing to use a method other than the EPA-administered State CAIR trading programs to meet their CAIR obligations.

As discussed further below, the EPA intends to record Federal allocations 1 year at a time for the initial control periods. In this manner, even if a State does not have an approved CAIR SIP

[13] As discussed in the CAIR NFR preamble (70 FR 25278), each State has the flexibility to allocate its allowances however they choose (within their State budgets) so long as certain timing requirements are met. Today's preamble discusses the approval of State allocations within the context of coordinating timing for recording Federal allocations—note that this discussion is not intended to imply any less flexibility for States in their choice of allocation methodology than the flexibility provided in CAIR.

revision in time for the Agency to record State allocations for the first control period, it would be possible to record State allocations for future control periods. The Agency strongly urges States to submit CAIR SIP revisions (full or abbreviated revisions) to the Agency in a timely manner, and we intend to work with States and ensure that we would not have overlapping allocations for any control period.

As explained in the CAIR NFR, the States have until September 11, 2006 to submit full CAIR SIP revisions to the Agency. For a State that chooses to participate in the EPA-administered CAIR SIP NO_X trading programs this SIP revision would be required to include the State's NO_X allocation methodology. The EPA anticipates that it may require about a year to approve a full SIP submission. The CAIR SIP rules require States to submit their first set of CAIR NO_X allocations to EPA by October 31, 2006.

As discussed above, the Agency is proposing that States may choose to submit an abbreviated SIP revision to allocate NO_X allowances to individual sources in their State (for the annual and/or ozone season Federal CAIR NO_X trading programs). In this way, a State could choose to allocate NO_X allowances to its sources while letting the FIP (or section 126 remedy) control all other aspects of the trading programs. Through an abbreviated SIP revision, a State can also ensure that its allocations will apply even though its full SIP revision is still undergoing EPA review. Note that States could also choose to address non-EGU opt-ins, allocation of CSP allowances, and/or inclusion of non-CAIR NO_X SIP Call trading sources in an abbreviated SIP revision. The Agency proposes that States would have until March 31, 2007 to submit their allocation methodology in an abbreviated SIP revision. The EPA proposes to allow States to submit abbreviated SIP revisions later than full revisions because we anticipate that we will be able to complete the approval process more quickly for abbreviated SIP revisions due to their narrower scope. The Agency proposes that the State would have until October 31, 2007 to submit their first set of CAIR NO_X allocations pursuant to an abbreviated SIP revision. The proposed dates for recording NO_X allocations, discussed below, would be the same whether the allocations are approved in a full SIP revision or in an abbreviated revision.

Assuming that States submit full CAIR SIP revisions by the September 2006 deadline and that EPA can approve the revisions in about a year, and assuming some additional time may be required for coordination between States and EPA before State allocations can be recorded in source accounts, it is reasonable to assume that EPA could record such State allocations by December 1, 2007. Likewise, assuming that States submit abbreviated SIP revisions that address allocations by the March 2007 deadline and that EPA can approve the abbreviated revisions in about 6 months, it is reasonable to assume that EPA could record such allocations by December 1, 2007.

Therefore, the EPA proposes to record NO_X allocations in source accounts for the 2009 control period by December 1, 2007. If a State's timely NO_X allocations are approved then the Agency would record State allocations for the 2009 control period. However, for any CAIR State for which a SIP is not approved by December 1, 2007, the EPA would record Federal NO_X allocations for 2009. Recording NO_X allocations by December 2007 for the 2009 control period provides affected sources with certainty of their allocations 1 year in advance of the beginning of the control period.

The Agency proposes to record Federal NO_X allocations in source accounts 1 year at a time for the 2009 and 2010 control periods in order to provide flexibility to States. If EPA records Federal allocations for the 2009 control period and subsequently approves a State's timely SIP revision including NO_X allocations (a full or abbreviated revision), the Agency would record the State's allocations for future years. The Agency does not intend to approve State NO_X allocations for a particular control period that would overlap with Federal allocations already recorded in source accounts. Provisions for withdrawal of CAIR FIPs and section 126 remedies are discussed elsewhere in this preamble.

The EPA proposes to record NO_X allocations in source accounts by December 1, 2008 for the 2010 control period. If a State's NO_X allocations are approved by then, the Agency may record State allocations for the 2010 control period. However, for any CAIR State for which a SIP is not approved by December 1, 2008, the EPA would record Federal NO_X allocations for 2010. Therefore, if a State obtained SIP approval after December 1, 2007 but before December 1, 2008, the State's NO_X allocations may be recorded in source accounts for the 2010 control period.

The Agency proposes to record NO_X allocations in source accounts by December 1, 2009 for the 2011–2013 control periods. Therefore, if a State obtained SIP approval after December 1, 2008 but before December 1, 2009, the State's NO_X allocations may be recorded in source accounts for the 2011–2013 control periods. However, for any CAIR State for which a SIP is not approved by December 1, 2009, the EPA would record Federal NO_X allocations for 2011–2013.

Beginning with the 2014 control period and for each control period thereafter, EPA proposes to record Federal NO_X allocations in source accounts by December 1 of each year for the control period in the fourth year after the recordation year, thereby providing allowances about 3 years in advance for sources to plan their compliance strategies. For example, EPA would record allocations for the 2014 control period by December 1, 2010.

The CAIR requires States to submit to the Agency their unit-by-unit NO_X allocations for a given year no less than 3 years prior to the applicable control year to ensure sources have time to plan for compliance (see CAIR NFR preamble at 70 FR 25278–25279)[14]. In today's proposal, EPA would record Federal NO_X allocations in source accounts (in absence of approved timely SIP revisions) with less than 3 years lead time for the first 4 control periods, *i.e.*, for 2009 through 2012. Beginning with the 2013 control period, however, we propose to record Federal allocations with about 3 years' lead time. This proposed schedule is intended to balance the need to provide sources their allocations in advance to facilitate planning for compliance, with the need to preserve opportunities for States to allocate allowances to sources if they choose. The EPA acknowledges that it is preferable for sources to have at least 3 years lead time to the extent feasible. We strongly urge States to submit timely CAIR SIP revisions so that we can approve revisions and record State allocations in source accounts according to the schedule in CAIR, which would provide at least 3 years notice for all but the first control period.

Table VI–1, below, summarizes the Agency's proposed timing for recording Federal NO_X allocations in source accounts. The table shows the timing scheme through the 2016 control period. Timing for subsequent control periods would follow the same pattern as is shown for 2014–2016, *i.e.*, allocations would by recorded by 3 years in advance of the control period.

[14] As discussed in the CAIR NFR (70 FR 25278), based on a SIP submission deadline in September 2006 there would be less than 3 years notice of allocations for the first control period.

TABLE VI–1.—PROPOSED TIMING FOR NO_X ALLOCATIONS[15]

CAIR control period	Date Federal NO_X allocations are recorded	Time between recordation date and beginning of control period
2009	December 1, 2007	1 year.
2010	December 1, 2008	1 year.
2011	December 1, 2009	1 year.
2012	December 1, 2009	2 years.
2013	December 1, 2009	3 years.
2014	December 1, 2010	3 years.
2015	December 1, 2011	3 years.
2016	December 1, 2012	3 years.

The Agency intends to publish its determination of Federal NO_X allocations for 2009–2014 in a single notice (with opportunity for comment) prior to December 1, 2007. The Agency would publish its determination of Federal NO_X allocations (with opportunity for comment) prior to December 1 of each year for future years. For example, we would publish Federal NO_X allocations for the 2015 control period during 2011.

The Agency intends to work with the States to ensure that for any State that chooses to allocate NO_X allocations—either through a full SIP revision or an abbreviated revision—the Agency will record the State's allocations (contained in an approved SIP revision) in source accounts rather than record Federal allocations, as soon as it is feasible. The proposed timing scheme for recording Federal NO_X allocations is intended to provide States with as much flexibility as is feasible given the available time, while also providing sources time to plan compliance strategies.

For States choosing to submit full SIP revisions for CAIR, the Agency suggests they could consider designating any of the four specific elements that we propose to accept in abbreviated SIP revisions (*e.g.*, NO_X allocations) as being submitted for purposes of both a full SIP revision and an abbreviated revision. Because the Agency anticipates that we would be able to approve abbreviated SIP revisions more quickly than full revisions, a State could, by designating its NO_X allocations as an abbreviated SIP revision (as well as being part of a full SIP revision), potentially allow for the allocations portion to be approved more quickly. This might have benefit, for example, in a situation in which it was not feasible to approve a State's full SIP revision before December 1, 2007. If the NO_X allocations portion of the revision could be approved by December 1, 2007, then the State's allocations may be recorded in source accounts. Until the full SIP were subsequently approved, the other elements of the trading programs would be controlled by the Federal CAIR programs. Provisions for withdrawal of CAIR FIPs and section 126 responses are discussed elsewhere in this preamble.

Today the Agency is proposing its NO_X allocation methodology for the Federal CAIR NO_X cap and trade programs. The EPA intends to publish its initial determination of unit-by-unit Federal CAIR NO_X allocations in a subsequent notice of data availability (NODA).[16] The public will have opportunity to comment on those initial allocations.

In the NODA, the Agency intends to publish its initial NO_X allocation determinations for the control periods 2009 through 2014. After public comment, the EPA would publish its final determinations of allocations for 2009 through 2014. Although EPA intends to publish its allocations for 2009 through 2014 in a single notice, the Agency intends to record allocations in source accounts one year at a time for 2009 and 2010 in order to provide flexibility to States.

Proposed NO_X Allocation Methodology

Today's proposed NO_X allocation approach for both annual and ozone season allowances is consistent with the example methodology presented in the CAIR SIP model trading rules. The proposed methodology is the same for annual NO_X allowances and for ozone season NO_X allowances, except that the ozone season method uses ozone season heat input not annual heat input.

For existing units, the proposed NO_X allocation methodology uses input-based allocations, adjusting the heat input by factors based on fuel type, as described below. As in the example allocation methodology in the CAIR model rules, for existing units the Agency proposes to use heat input based on the average of the 3 highest amounts of a unit's adjusted heat input for 5 years (2000 through 2004). The EPA also asks for comment on using heat input based on 3 or 4 years of data rather than 5 years.

For new units that have established baselines, allocations would be based on generation using a modified output approach to convert output to heat input (described below), and allocations to existing units would be updated to take into account new generation as new units would be allocated from the pool of allowances shared with existing sources. New units that have not yet established baseline data would be allocated from a new unit set-aside.

The Agency would allocate from the State's EGU NO_X budget for the first 6 control periods (2009 through 2014) for existing sources on the basis of historic baseline heat input. Consistent with CAIR, January 1, 2001 is the proposed cut-off on-line date for considering units as existing units. Allowances for 2015 and later would be allocated from the State's EGU NO_X budget annually, 3 years in advance. These allocations would take into account output data from new units with established baselines (modified by heat input conversion factors to yield heat input numbers, as described below). As new units enter into service and establish a baseline, they would be allocated allowances in proportion to their share of the total calculated heat input. Allowances allocated to existing units would slowly decline as their share of total calculated heat input decreases with the entry of new units (note that once a baseline heat input is established for existing units, this baseline heat input would not change).

New units that have entered service but have not yet started receiving allowances through the updating of allocations would receive allowances each year from a new unit set-aside. The allowances from the set-aside would be distributed based on a unit's actual emissions from the previous year, which would provide allowances for use in meeting the allowance-holding requirement during the interim period before the unit is allocated allowances on the same basis as existing units. Consistent with the CAIR SIP example allocation methodology, the new unit set-aside would be equal to 5 percent of a State's emission budget for the years 2009–2013 and 3 percent of a State's

[15] The Agency does not intend to wait until December 1, 2007 to record State NO_X allocations for the 2009 control period but rather would record approved allocations as soon as feasible and according to the schedule in the CAIR SIP rules. The EPA proposes that we would not record Federal NO_X allocations for any State until December 1, 2007 for the 2009 control period in order to provide the opportunity for State allocations to be submitted and approved. The Agency proposes the same process for future years as well (*i.e.,* we would record State allocations for the 2010 control period as soon as is feasible and according to the schedule in the CAIR SIP rules, but would wait until December 1, 2008 to record Federal allocations for 2010 in order to provide opportunity for States to allocate).

[16] The Agency will determine Federal NO_X allocations based on the best available data. When EPA publishes its NO_X allocations, the unit-by-unit list of allocations would not constitute a list of affected sources and should not be interpreted as such.

emission budget for subsequent years. New units would begin receiving allowances from the 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 from the preceding control period. Under the proposed CAIR Federal cap and trade programs, EPA would 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 would be distributed on a pro-rata basis.

As in the CAIR SIP example methodology, after 5 years of operation, a new unit would have an adequate operating baseline of output data to be incorporated into the calculations for NO_X allocations to all affected units. The average of the highest 3 years from these 5 years would be multiplied by the applicable heat-input conversion factors to calculate the heat input value used to determine the new unit's allocation from the pool of allowances for all sources. New units would update the heat input numbers only once—for the initial 5 year baseline period after they start operating. As in the CAIR SIP example methodology, existing units as a group would not update their heat input, which would eliminate the potential for a generation subsidy. Retired units would continue to receive allowances indefinitely, thereby creating an incentive to retire less efficient units.

The Agency seeks comment on its proposed NO_X allocation methodology.

Sources of Data for NO_X Allocations

To determine NO_X allocations for purposes of the Federal CAIR cap and trade programs, the Agency proposes to use heat input and fuel type data reported to EPA's Electronic Data Reporting (EDR) system, where available, and to use best available heat input and fuel type data (*e.g.*, data from the Energy Information Administration (EIA)) where EDR data is not available. The Agency proposes to use output data reported to EPA's EDR system.

Adjustments to Heat Input Data by Fuel Factors

As in the example allocation methodology in the CAIR SIP model rules, today's proposed approach would include adjustments to heat input by fuel type, using fuel adjustment factors that are based on average historic NO_X emissions rates by three fuel types (coal, natural gas, and oil) for the years 1999—2002. These adjustment factors are 1.0 for coal-fired units, 0.6 for oil-fired units, and 0.4 for units fired with all other fuels (*e.g.*, gas). The factors reflect the inherently different emissions rates of different fossil fuel-fired units.

Modified Output Approach for New Units

As in the CAIR example allocation approach, the Agency proposes to allocate to new units that have established baselines on a ''modified output'' basis, by multiplying the unit's gross output by a heat rate conversion factor of 7,900 Btu/kWh for coal units and 6,675 Btu/kWh for oil and gas units. A conversion rate for each fuel type will create consistent and level incentives for efficient generation, rather than favoring new units that may have higher heat rates. The conversion factors are based on assumptions in EIA's Annual Energy Outlook (AEO) 2004.

Cogeneration Units

As in the CAIR SIP example methodology, for new cogeneration units, allowances would be calculated by converting the available thermal output (Btu) of useable steam from a boiler to an equivalent heat input by dividing the total thermal output (Btu) by a general boiler/heat exchanger efficiency of 80 percent.

For new combustion turbine cogeneration units, allowances would be calculated by converting the available thermal output of useable steam from a heat recovery steam generator (HRSG) to an equivalent heat input by dividing the total thermal output (Btu) by the same efficiency rate, then adding the electrical generation from the combustion turbine converted to an equivalent heat input by multiplying by the conversion factor of 3,413 Btu/kWh. This sum will yield the total equivalent heat input for the cogeneration unit. This approach focuses on the efficiency of a cogeneration unit in capturing energy in the form of steam or heat from the fuel input.

For additional discussion of the example NO_X allocation methodology in the CAIR SIP model trading rules, see section VIII.D. in the CAIR NFR preamble (70 FR 25278–25282).

Alternative allocation approach on which the Agency seeks comment: Providing sources owned by small entities with a greater share of allowances.

The EPA also seeks comment on allocating in such a way as to provide sources owned by small entities with a greater share of allowances. The Agency convened a Small Business Advocacy Review Panel that discussed options to provide additional flexibility to small entities. Specifically, the Agency is taking comment on an option (proposed by one member of the Panel) that would set aside some percentage of States' annual NO_X budgets and provide these allowances to certain small entity sources that can demonstrate economic hardship as a result of the rule. Such an option would necessitate adjusting the number of NO_X allowances available to other affected sources in order to ensure that the overall reduction requirements of CAIR are achieved. Because EPA does not allocate SO_2 allowances, the Agency could only provide relief through NO_X allowance allocations. However, because allowances are fungible, it would be possible for the burden on small entity sources that would experience hardship as a result of the SO_2 trading program to be reduced through the distribution of additional NO_X allowances. The EPA solicits comments on appropriate criteria for establishing hardship. See section 9.4 of the Panel report (*http://www.epa.gov/sbrefa*) and section IX.C. in this preamble for further description of the Panel discussions.

Alternative allocation approach on which the Agency seeks comment: Use of an auction to distribute NO_X allowances.

Allowances can be distributed by allocating them directly to sources, offering them for sale to bidders (*i.e.*, an ''auction'') or a combination of the two. Today's notice proposes to allocate NO_X allowances directly to emissions sources. However, the Agency also seeks comment on the desirability of using a combination of direct allocations and auctions for distributing allowances in the proposed Federal CAIR trading programs. The primary benefit of allowance auctions is that they are the most economically efficient way to distribute allowances. This approach can ensure that all parties, including the general public, have access to allowances. With an auction, existing and new sources have equal access to allowances. Under a combination approach, such as the one we are taking comment on, the effect of these benefits is dependent upon the percentage of allowances that are auctioned.

The EPA discussed allowance auctions and took comment on using auctions in the CAIR proposal (69 FR 4566, January 30, 2004) and supplemental proposal (69 FR 32684, June 10, 2004). The title IV Acid Rain Program uses a combination approach to distributing allowances, reserving 2.8 percent of available allowances for an auction and directly allocating the remainder.

The Agency seeks comment on using a combination approach for distributing

NO_X allowances in the proposed Federal CAIR trading programs. The proposed approach is analogous to the auction approach in the Administration's proposed Clear Skies legislation, and is defined as follows: For the first CAIR NO_X control period (2009) the Agency would allocate 100 percent of the allowances using the fuel-factor adjusted heat input approach described above. For the second control period (2010) the Agency would allocate 99 percent of allowances to units and auction the remaining 1 percent. The percentage of allowances distributed via auction would increase over time, with the Agency distributing via auction an additional 1 percent of allowances every year for twenty years, and then an additional 2.5 percent of allowances every year thereafter, until eventually 100 percent of allowances would be distributed via auction.

If EPA implemented allowance auctions for the Federal CAIR trading programs, the Agency would establish procedures for the frequency and timing of auctions, bidding schedules and bidding mechanisms, requirements for financial guarantees, and other administrative requirements and procedures as necessary to implement allowance auctions. The Agency seeks comment on appropriate auction procedures for the proposed Federal CAIR trading programs. Allowance auctions are typically (but are not required to be) open to any person, including sources or third-party entities, that can comply with the auction protocols. Proceeds from any auction conducted for Federal CAIR trading programs would be deposited in the United States Treasury.

Regardless of whether or not the allowance distribution approach taken by the Agency in its Federal trading programs includes the use of auctions, the States have full flexibility in determining the allocation method to use in their State CAIR implementation plans. As discussed above, the EPA would allocate NO_X allowances to sources only in a CAIR-State that does not have a timely, approved full CAIR SIP revision or timely, approved abbreviated CAIR SIP revision that includes allocations. A State choosing to submit a full SIP revision or an abbreviated SIP revision that covers allowance allocations could elect to distribute allowances using auctions, direct allocations to sources, or other methodologies (or combinations of methodologies). The Agency intends to withdraw Federal CAIR trading programs in coordination with approval of full CAIR SIP revisions (provisions for withdrawal of CAIR FIPs and section 126 responses are discussed elsewhere in this preamble).

Allocation of CSP Annual NO_X Allowances to Sources

As discussed in section V, above, the Agency proposes that we will distribute annual NO_X allowances from the Compliance Supplement Pools (CSP) to sources for use in complying with the Federal annual NO_X cap and trade program. The proposed CSP amounts for each State are the same as in the CAIR NFR, and are shown in Table V–3 in today's action. The Agency is not inviting comment on the State CSP amounts.

In the CAIR NFR, the Agency provided that a State participating in the EPA-administered CAIR SIP NO_X annual trading program would distribute its CSP allowances by two mechanisms: (1) To sources that implement NO_X control measures resulting in reductions in 2007 or 2008 that are beyond what is required by any applicable State or Federal emissions limitation (early reductions); and, (2) based on demonstration of need for an extension of the 2009 deadline for implementing emission controls. See section VII.A. in the CAIR NFR preamble (70 FR 25256–25263).

Today, the Agency proposes to allocate CSP allowances to sources for use in the Federal CAIR annual NO_X cap and trade program based on the same two mechanisms as we provided in the CAIR NFR for States to use. However, we propose to use a more specific methodology for determining early reductions than the mechanism provided in the CAIR NFR.

The Agency proposes to award CSP allowances for early reductions to units that—for the years for which they apply for early reduction credits—are operating at an annual NO_X emission rate below 0.25 lb/mmBtu. In addition, the Agency proposes that if a unit applying for early reduction credit is included in a title IV NO_X averaging plan, then the source must demonstrate that the plan-wide weighted-average NO_X emission rate for the year for which early reduction credit is sought must be equal to or lower than the plan-wide rate for the year prior to the year for which credit is sought. Provided a unit met these proposed criteria, it could request early reduction credit equal to the difference between 0.25 lb/mmBtu and the unit's actual emission rate multiplied by the unit's actual heat input for the applicable control period. In proposing these criteria, for early reductions, EPA believes that the criteria ensure that the award of CSP allowances will be aimed at early reductions and that owners and operators will be able to make reasonable projections about how many allowances they may receive for their early reductions. This early reduction method is similar to the method used in the NO_X SIP Call section 126 action (65 FR 2674, January 18, 2000). The Agency seeks comment on this proposed method for determining early reductions.

Under the abbreviated SIP revision option that the Agency proposes today, States could choose to submit abbreviated revisions addressing distribution of CSP allowances to individual sources. Such revisions would need to include mechanisms based on early reductions as well as based on demonstration of need. States could choose to include the early reduction mechanism set forth in the CAIR SIP model trading rules or could choose to use the more specific early reduction criteria proposed in today's Federal trading rules, in addition to the criterion based on demonstration of need.

E. Allocation of SO_2 Emission Allowances to Sources

The proposed Federal CAIR SO_2 cap and trade program would rely on title IV allowances, as does the CAIR SIP model SO_2 trading rule. Title IV allowances have already been allocated in perpetuity to individual units by title IV of the CAA (70 FR 25278). Thus, today's proposal does not include an allocation methodology for SO_2 allowances, except with regard to opt-in units.

F. Allowance Banking

Allowance banking is the retention of unused emissions allowances from 1 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 speaking, banking has several advantages. Allowance banking can encourage earlier or greater reductions than are required from sources, stimulate the market and encourage efficiency, and provide flexibility in achieving emissions reductions goals.

The Agency proposes to allow unrestricted banking under the Federal CAIR cap and trade programs, the same as in the CAIR SIP model cap and trade programs. For additional discussion on allowance banking provisions in CAIR, see section VIII.E.1 in the CAIR NFR preamble (70 FR 25282–25283).

G. Incentives for Early Reductions

When sources reduce their SO_2 and NO_X emissions prior to the first phase

of a multi-phase cap and trade program, it creates a slope of emissions that gradually declines over time, an emission reduction ''glide path'' that provides early environmental benefit and lowers the costs of compliance. Early reduction credits (ERCs) can provide an incentive for sources to install and/or operate controls before the implementation dates. Allowing emission allowances from existing programs to be used for compliance in new programs is another mechanism to encourage early reductions prior to the start of cap and trade programs. See further discussion of this topic in section VIII.F. of the CAIR NFR preamble (70 FR 25284–25286).

As in the CAIR SIP model trading rules, the proposed Federal CAIR cap and trade programs would provide incentives for early reductions in each of the three programs (the SO_2 program, NO_X program, and ozone season NO_X program), as described below.

1. SO_2 Program

The proposed Federal CAIR SO_2 cap and trade program would allow for affected sources to use title IV SO_2 allowances of vintage 2009 and earlier for compliance with the Federal CAIR program at a 1-to-1 ratio. This approach was part of the CAIR policy case assumptions used in the rulemaking modeling and the EPA has shown that the SO_2 cap and trade program, with this early incentive mechanism, will achieve the level of SO_2 reductions needed to meet the CAIR goals. This proposed early reduction incentive is identical to the SO_2 incentive in the CAIR SIP model cap and trade programs.

2. NO_X Program

The proposed Federal CAIR NO_X cap and trade program would provide incentives for early annual NO_X reductions by creating a Compliance Supplement Pool (CSP) for each affected State, from which EPA could distribute allowances for early, surplus NO_X emissions reductions occurring in the years 2007 and 2008, as described above. The Agency's proposed method for allocating CSP allowances to States is explained above. As in the CAIR SIP rule, the CSP for today's proposal would provide a total of about 200,000 annual NO_X allowances of vintage 2009 for the CAIR region, apportioned to each State, which would be in addition to each State's annual NO_X budgets. Table V–3 in this preamble provides the CSP amounts by State. The Agency is not inviting comment on the CSP amounts that were determined in CAIR. This proposed early reduction incentive is identical to the annual NO_X incentive in the CAIR SIP rule, except that we are proposing a more specific methodology for determining early reductions than the criteria in the CAIR SIP rule.

3. Ozone Season NO_X Program

The proposed Federal CAIR ozone season NO_X cap and trade program would allow the use of NO_X SIP Call allowances of vintage years 2008 and earlier for compliance with the Federal CAIR ozone season program. This mechanism would provide an incentive for sources in NO_X SIP Call States to reduce their ozone season NO_X emissions early and bank additional allowances into the Federal CAIR ozone season program. This proposed early reduction incentive is identical to the ozone season NO_X incentive in the CAIR SIP cap and trade programs.

H. Monitoring and Reporting Requirements

Under the CAIR SIP model cap and trade rules, sources are required to monitor and report NO_X and SO_2 mass emissions in accordance with 40 CFR part 75. (See Section VIII.H. of the CAIR NFR preamble, 70 FR 25288.) Many CAIR sources are measuring and reporting SO_2 mass emissions and NO_X emission rate year round under the Acid Rain Program. Many additional sources are also reporting NO_X mass emissions at least during the ozone season and often year round under the NO_X SIP Call. The CAIR SIP model rules require continuous measurement of NO_X mass emissions by all affected sources by January 1, 2008 using part 75 certified monitoring methodologies for the NO_X annual program and May 1, 2008 for the NO_X ozone season program. SO_2 emissions must be monitored by those same sources beginning January 1, 2009.

Today's proposal requires Part 75 monitoring and reporting for all sources subject to the Federal CAIR cap and trade programs. This is consistent with the CAIR SIP model cap and trade programs. For additional discussion on monitoring and reporting requirements, see Section VIII.H. in the CAIR NFR preamble (70 FR 25288).

I. Differences Between the Proposed Federal CAIR Cap and Trade Programs and the CAIR SIP Rules

The proposed Federal CAIR NO_X and SO_2 cap and trade programs are largely the same as the CAIR SIP model trading programs. The EPA intends the proposed Federal CAIR cap and trade rules to be as similar as possible to the CAIR SIP model cap and trade rules so that the two sets of rules will operate as single integrated cap and trade programs, one for annual NO_X, one for SO_2, and one for ozone season NO_X. However, the Agency is proposing certain limited differences as described below. These differences arise primarily from the need for Federal implementation of the programs rather than State implementation and to facilitate the transition from Federal implementation to State implementation. Note that the proposed Federal CAIR cap and trade programs include all of the mandatory elements that States must include in order to participate in the EPA-administered cap and trade programs for CAIR (the SIP model trading rules).

This section describes the main differences between the proposed Federal CAIR trading rules and the CAIR SIP rules. This is not an exhaustive list of differences.

NO_X Allocations

As discussed above, the proposed NO_X allocation methodology for the Federal CAIR annual and ozone season NO_X trading programs is consistent with the sample NO_X allocation methodology in the CAIR SIP model trading rules. However, timing for recordation of NO_X allowances in source accounts differs in the proposed Federal CAIR rules compared to the SIP model rules (see timing discussion, above).

Additionally, when the Agency allocates NO_X allocations, we follow notice and comment procedures consistent with Federal law (the Administrative Procedures Act), whereas under a SIP, a State follows its own administrative procedures (*e.g.*, for notice and comment). Further, the proposed Federal CAIR rules include criteria for ''best available data'' for purposes of NO_X allocations (in absence of continuous emission monitoring systems (CEMS) data), which are not included in the SIP model rules.

Criteria for Allocating CSP Allowances to Sources

As discussed above, the proposed Federal CAIR rules include a more specific methodology for determining early reductions for purposes of allocating CSP allowances than the mechanism in the CAIR SIP model rules.

Abbreviated SIP Revisions

As discussed above, the Agency proposes to give States the option to retain control of certain elements of the Federal CAIR trading programs without submitting full SIP revisions. States could submit abbreviated SIP revisions that cover any of the following four specific elements: (1) Non-EGU opt-ins,

(2) allocation of NO_X allowances to individual sources, (3) allocation of annual NO_X Compliance Supplement Pool (CSP) allowances to individual sources, and (4) inclusion of non-CAIR NO_X SIP Call trading sources in the Federal CAIR ozone season NO_X trading program.

Applicability

The EPA intends the applicability provisions specifying units covered by the CAIR Federal trading programs to be identical to those provisions in the CAIR SIP rules. As discussed elsewhere in today's preamble, the Agency is proposing certain changes to the applicability provisions in the CAIR SIP rules. The proposed applicability provisions for the Federal CAIR trading programs are the same as those for the CAIR SIP rules if today's proposed changes to the CAIR SIP rules are finalized.

Definitions

The EPA is proposing to use the same definitions as those that apply in the CAIR SIP rules with a few exceptions that are necessary to reflect Federal implementation rather than State implementation.

Issuance of NO_X Allowances Allocations

The Administrator, rather than the permitting authority, would allocate NO_X allowances under the Federal CAIR cap and trade programs, unless an abbreviated SIP revision is approved providing for State allocation of allowances.

Monitoring and Reporting Requirements

The proposed Federal CAIR monitoring and reporting provisions (including, among other things, general requirements, initial certification and recertification procedures, out of control periods, notifications, recordkeeping and reporting, and petitions) are essentially the same as the monitoring-related provisions of CAIR SIP model trading rules. The differences between the provisions reflect the fact that the Agency would oversee administration of the monitoring requirements, rather than both the Agency and the permitting authority overseeing the requirements as in the CAIR SIP rules. As a result, for example, monitoring certification applications would be submitted to the Administrator, and the Administrator, rather than the permitting authority, would act on the applications. By further example, the Administrator would handle all audit decertifications and all petitions for alternatives to the monitoring requirements.

J. Coordination Between the Proposed Federal CAIR Cap and Trade Programs and CAIR SIPs

The EPA intends that if States choose to meet their emission reduction obligations under CAIR by participating in the EPA-administered CAIR SIP NO_X and SO_2 trading programs, such programs will be fully integrated with respective Federal CAIR NO_X and SO_2 trading programs that EPA may promulgate in a final FIP or in a final section 126 response. The sources covered in the CAIR SIP model trading rules are the same types of sources named in the section 126 petition (except that the petition names a subset of the States affected by CAIR) and are the same types as the sources that EPA proposes to regulate in the proposed CAIR FIP and section 126 remedy.

The SO_2 allowances under the CAIR SIP SO_2 trading program, CAIR FIP SO_2 trading program, or section 126 SO_2 trading program would all be termed ''CAIR SO_2 allowances'' and could be used for compliance with the allowance-holding requirement in any of these trading programs. The NO_X annual allowances under the CAIR SIP, CAIR FIP, or section 126 NO_X trading program would all be termed ''CAIR NO_X allowances'' and could be used for compliance in any of these trading programs. The NO_X ozone season allowances under the CAIR SIP or CAIR FIP ozone season NO_X trading program would all be termed ''CAIR Ozone Season NO_X allowances'' and could be used for compliance in either of these programs.

The proposed regulatory text for the CAIR FIP provides that allowances issued under a CAIR FIP or CAIR SIP trading program could be used for compliance in the CAIR FIP trading program (within each of the respective trading programs—SO_2, annual NO_X, or ozone season NO_X). Today's proposal also includes revisions to the CAIR SIP model trading rules that would provide that allowances issued under a CAIR FIP or CAIR SIP trading program could be used for compliance in the CAIR SIP trading program (within the respective SO_2, annual NO_X, or ozone season NO_X trading programs).

As discussed above, today's proposal does not include regulatory text for the proposed section 126 remedy. If the Agency promulgates regulatory text for the section 126 remedy, the text would include a provision that allowances issued under a CAIR FIP, CAIR SIP, or section 126 trading program could be used for compliance in any of these programs (within the respective emissions trading programs). In that case, the Agency would propose corresponding changes to the CAIR FIP and SIP trading rules to provide that allowances issued under a CAIR FIP, CAIR SIP, or section 126 trading program could be used for compliance in any of these programs.

K. Relationship of Emissions Trading Programs to Section 126 Relief

In its petition, North Carolina states that ''EPA cannot allow interstate trading of emissions allowances to thwart North Carolina's remedy under section 126.'' Petition p. 25. The State's concern is that under a regionwide trading program, EGUs in upwind States which contribute to North Carolina nonattainment might not in fact reduce their emissions (or might not reduce emissions sufficiently for North Carolina's purposes) since they could purchase allowances from non-contributing (or less-contributing) EGUs. *Id.* p. 26. North Carolina believes this result to be ''irrational'' because EPA ''would have made the technical finding of contribution without requiring a real remedy''. *Id.*

EPA disagrees. As explained above in section II.A., a finding of whether there is a violation of section 126 turns on whether there is a violation of section 110(a)(2)(D), *i.e.*, whether upwind States are contributing significantly to nonattainment or interfering significantly with maintenance in downwind receptors. Upwind States contribute significantly if collective contribution is above a designated amount and highly cost-effective controls are available to reduce emissions. In CAIR, EPA determined the extent of reductions required to eliminate significant contribution (*i.e.*, to remove the section 110(a)(2)(D) violation) and expressed the reductions as statewide budgets of the $PM_{2.5}$ precursors SO_2 and NO_X susceptible to reduction by highly cost-effective controls. Emissions trading (within the constraints of the emissions caps based on these statewide emission budgets) is one means of implementing highly cost-effective controls and consequently is a lawful (and CAIR-authorized) means of eliminating a section 110(a)(2)(D) violation.

It therefore follows that once a section 110(a)(2)(D) violation is eliminated, there is no section 126 violation since the basis for the section 126 finding would not exist.[17] The violation can be

[17] Indeed, North Carolina's petition itself essentially recognizes this point, since the petition notes (correctly) that section 110(a)(2)(D) and section 126 are co-extensive for purposes of what constitutes a violation. *Id.* p. 3. The petition likewise accepts the CAIR definition of ''significant

eliminated through EPA adopting a FIP containing the CAIR trading programs or through EPA approving a SIP containing the CAIR trading programs (or approving a SIP containing the other emission reduction options specified in CAIR).

For the same reasons, if EPA chooses to act directly under section 126 by making the section 126(b) findings and adopting a remedy pursuant to section 126(c) (rather than eliminating the section 110(a)(2)(D) violation by means of a FIP), EPA could ''bring about compliance with the requirements contained in section [110(a)(2)(D)]'' (CAA section 126(c)) by adopting the CAIR FIP trading programs, for the States containing sources linked to North Carolina $PM_{2.5}$ NAAQS nonattainment or maintenance problems. This result necessarily follows because, as just explained, these CAIR FIP provisions eliminate the significant contribution to North Carolina nonattainment and maintenance of the $PM_{2.5}$ NAAQS.

In any event, the Agency believes that upwind sources in States that were found to contribute significantly to North Carolina nonattainment will in fact reduce emissions of $PM_{2.5}$ precursors under the CAIR trading regime. The Agency used the Integrated Planning Model (IPM) to project emission and cost impacts of CAIR.[18] The EPA modeled the CAIR requirements assuming interstate emissions trading programs for EGUs. We modeled three separate regionwide EGU emissions trading programs (an annual SO_2 program, an annual NO_X program, and an ozone season NO_X program). The Agency's IPM modeling for the CAIR NFR—which assumes interstate emissions trading[19]—projects decreases in annual SO_2 and NO_X emissions under CAIR compared to the Base Case (without CAIR) in both 2010 and 2015 for each of the States found in the CAIR NFR analysis to contribute significantly to nonattainment of the $PM_{2.5}$ NAAQS in North Carolina.[20]

Moreover, the emission reductions under CAIR are likely to be sufficient to eliminate $PM_{2.5}$ nonattainment in North Carolina. In the CAIR NFR, the Agency presented its modeling of the Base Case, which projects that 10 States would contribute significantly to $PM_{2.5}$ nonattainment in North Carolina in 2010 without CAIR (see discussion in section III in this preamble). Under CAIR, however, EPA's modeling projects that by 2010 there will be no remaining $PM_{2.5}$ nonattainment counties in North Carolina, thus no States contributing to nonattainment. These projected CAIR impacts are likewise from EPA's CAIR modeling with interstate emissions trading.

This discussion of the Agency's analysis of CAIR is informational and is not intended to reopen or reconsider any issue related to that analysis.

Air quality modeling results are in the Air Quality Modeling Technical Support Document for the Final Clean Air Interstate Rule, March 2005, Appendix F. The EGU emissions modeling for the CAIR NFR is in the CAIR docket. State-by-State summaries of projected emissions impacts of CAIR are on the CAIR Web site at *epa.gov/cair/where.html.*

L. Interactions With Other CAA Programs

In the CAIR NFR preamble, section IX discusses interactions between the NO_X SIP Call and CAIR. Section IX also discusses interactions between the title IV Acid Rain Program and CAIR. Today's proposal covers the same States as the CAIR (this proposal includes Delaware and New Jersey for $PM_{2.5}$ purposes which is consistent with EPA's proposal at 70 FR 25408) and uses Federal trading programs that are substantively identical to the CAIR SIP model trading rules, thus the interactions would be as described in CAIR (70 FR 25289–25299).

VII. What Are the Revisions to the CAIR?

In today's action, EPA is proposing a number of revisions to the regulations issued as part of the CAIR. The proposed revisions to CAIR, explained in greater detail below, are primarily intended to facilitate federal implementation of the CAIR and to facilitate interaction between the proposed EPA-administered Federal CAIR trading programs and any EPA-administered State CAIR trading programs established through an approved SIP revision to meet the requirements of the CAIR.

With regard to § 51.123 in the CAIR, EPA is proposing to add provisions that allow states to submit abbreviated SIP revisions—as discussed above in Sections IV and VI of this preamble—that would have to meet certain requirements and that, if approved, would be integrated with the FIP trading programs and replace portions of the programs or modify application of the programs to sources in the State. In particular, a State could submit an abbreviated SIP revision providing for the permitting authority (instead of the Administrator) to allocate CAIR NO_X allowances in the Federal CAIR NO_X Annual Trading Program. The abbreviated SIP revision could also provide for the permitting authority to allocate the compliance supplement pool in the Federal CAIR NO_X Annual Trading Program. Similarly, the State could submit an abbreviated SIP revision providing for the expansion of the applicability provisions of the Federal CAIR NO_X Ozone Season Trading Program to include all units in the State's NO_X Budget Trading Program that are not already covered by such applicability provisions. The abbreviated SIP revisions could also provide for the permitting authority to allocate CAIR NO_X Ozone Season allowances under the Federal CAIR NO_X Ozone Season Trading Program. The abbreviated SIP revision could also provide for the inclusion of non-EGU opt-ins in the Federal CAIR trading programs. These changes will facilitate transfer from an EPA-administered Federal CAIR trading program to any EPA-administered State CAIR trading program.

Also, included in today's proposal are corresponding provisions in the Federal CAIR trading program regulations that would modify the allocation or applicability sections to be consistent with such approved abbreviated SIP revisions under § 51.123. For example, the Federal CAIR NO_X Annual Trading Program provides that, if an abbreviated SIP revision setting forth procedures for allowance allocations by the permitting authority is approved, the provisions in that SIP revision would replace the provisions otherwise in effect in that trading program for allowance allocation by the Administrator. By further example, the Federal CAIR NO_X Ozone Season Trading Program provides that, if an abbreviated SIP revision setting forth expanded applicability provisions to include NO_X Budget units not already in CAIR is approved, the applicability provisions in the trading program would be

contribution'' and agrees with the statewide emission budgets proposed in CAIR. Id. p. 21.

[18] See discussion of EPA's modeling using IPM in section V in this preamble. For further description, see section IV in the CAIR NFR preamble (70 FR 25196–25197) as well as a technical support document entitled ''Modeling of Control Costs, Emissions, and Control Retrofits for Cost Effectiveness and Feasibility Analyses'' in the CAIR docket.

[19] The IPM projects plant-level SO_2 and NO_X emissions under interstate emissions cap and trade programs. Emissions trading allows sources to find the least cost compliance strategy.

[20] The CAIR annual NO_X program includes a compliance supplement pool of about 200,000 allowances for the entire CAIR region, the use of which could lead to slightly higher NO_X emissions in some CAIR States than the projections shown in the CAIR NFR.

expanded to include such units. These changes will also facilitate transfer from a Federal CAIR trading program to a State CAIR trading program.

In addition to the proposed revisions to § 51.123 providing for abbreviated SIP revisions, today's action proposes other revisions to both § 51.123 and § 51.124 in order to clarify the definition of ''EGU'' in those rules. In particular, as discussed above in Section VI of the preamble, the status of solid waste incinerators under the CAIR is unclear. EPA did not intend for CAIR to require States that elect to participate in the EPA-administered CAIR trading program to regulate solid waste incineration units. In addition, the CAIR FIP is not intended to directly regulate solid waste incineration units. Furthermore, EPA has received two petitions to reconsider the definition of EGU with respect to solid waste incinerators in the model trading rule. The petitions were submitted by the Integrated Waste Service Association (IWSA) and the Commonwealth of Massachusetts.[21] In its petition, IWSA presents two main arguments regarding why EPA should reconsider the treatment of solid waste incinerators (and particularly municipal waste incinerators) under CAIR. First, it indicates that EPA failed to take notice and comment on the treatment of municipal waste incinerators (MWCs) under CAIR. The Commonwealth of Massachusetts makes a similar argument Second, IWSA argues that ''the regulation of MWCs is contrary to the core EPA methodology for regulating interstate transport of emissions under CAIR.'' As part of the second argument, IWSA makes two main points. They argue that emission reductions from municipal waste units are not highly cost effective and they argue that emissions of SO_2 and NO_X from municipal waste combustors are very small. The Commonwealth of Massachusetts also argues that EPA did not perform any specific cost analysis on municipal waste combustors to determine whether emission reductions from this source category were highly cost effective.

EPA has granted reconsideration on the issue of the definition of EGU in the final CAIR model trading rule as it relates to solid waste incinerators (and particularly municipal waste incinerators) because EPA agrees, that its analysis of highly cost effective emissions reductions did not assume that emissions from municipal waste combustors were highly cost effective to control. Further, EPA did not specifically indicate that it intended solid waste incinerators to be included in the model trading program. In fact, in both the proposed and final actions, EPA indicated that it did not consider reductions from municipal waste combustors in its determination of highly cost effective emission reductions. In a January 2004, technical support document entitled ''Identification and Discussion of Sources of Regional Point Source NO_X and SO_2 Emissions other than EGUs'', EPA indicated that, ''In examining non-EGU categories for emission reduction opportunities, we identified categories emitting more than one percent of the overall projected SO_2 or NO_X year 2010 emission inventory for the geographic area of interest.'' The document also notes that SO_2 emissions from waste incinerators emit about 0.1 percent of the SO_2, and 0.7 percent of the NO_X. In the response to comments document for the final rule, EPA indicated that, ''the final rule, as was the case for the proposal, does not reflect any emission reductions for NO_X or SO_2 from MWC facilities.'' For this reason, EPA decided to grant the petitions to reconsider this issue. It is therefore unnecessary for EPA to consider the other arguments presented by petitioners.

In this rulemaking EPA is reconsidering the definition of EGU in the final CAIR as it relates to MWCs and is taking comment on that issue. EPA is not taking comment on other issues not being reconsidered or addressed in this rulemaking—including the determination that, for purposes of the CAIR rulemaking, EPA did not determine that there were highly cost effective emission reductions from MWCs. It should also be noted that excluding MWCs from the definition of EGU in the CAIR model trading rule, does not preclude States from regulating MWCs, or other non-EGU sources, for the purpose of obtaining emission reductions required by CAIR.

The proposed revisions of the ''EGU'' definition address these issues. The proposed revisions would establish a specific exemption for certain solid waste incineration units. The proposed exemption is analogous to an exemption for such units under the Acid Rain Program. In addition, the status, under the CAIR, of units that formerly generated electricity for sale but stopped doing so many years ago warrants further clarification. The proposed revisions to the ''EGU'' definition state that, in order to be an EGU, a unit must serve a generator producing electricity for sale at any time since the later of November 15, 1990 or the start-up of the unit's combustion chamber. This proposed approach is analogous to the approach under the Acid Rain Program. This proposed approach also makes consistent EPA's position on this issue in the CAIR and the CAIR FIP proposed today.

Today's action also includes proposed revisions to the regulations setting forth the CAIR model trading programs. There are three categories of revisions. The first category includes revisions to clarify certain aspects of the CAIR model trading programs. This category of changes primarily intends to ensure consistency between the CAIR model trading rules and the proposed Federal CAIR trading programs. For example, revisions, analogous to the proposed revisions to the ''EGU'' definition in §§ 51.123 and 51.124, are proposed for the applicability provisions of the CAIR model trading programs to exclude certain solid waste incineration units and certain units that stopped before November 15, 1990, and do not resume, serving a greater-than-25 MW generator producing electricity for sale. Further, the definitions of some terms in the CAIR model trading programs (''commence commercial operation'' and ''commence operation'') are also revised consistent with the exclusion of units that, before November 15, 1990, stopped serving a greater-than-25MW generator producing electricity for sale. These revisions make the CAIR model trading rules consistent with the proposed applicability provisions and definitions for the Federal CAIR trading programs.

Another set of revisions are proposed to clarify the interaction of the application of excess emission penalties for sources that are subject to, and have excess emissions under, both the Acid Rain Program and the CAIR SO_2 trading program. Under the existing CAIR SO_2 model trading rule, the Administrator first determines, for a source in both the Acid Rain Program and the CAIR SO_2 trading program, whether the source holds enough allowances to cover emissions under the Acid Rain Program and then whether the source holds enough allowances to cover emissions under the CAIR SO_2 trading program. To the extent a source fails to hold enough allowances and so has excess emissions under the Acid Rain Program, the owners and operators must provide the Administrator one allowance from the next year to offset each ton of excess emissions and pay a $2,000 inflation-adjusted penalty per ton of excess emissions. To the extent the source also fails to hold enough allowances and so has excess emissions under the CAIR

[21] The petitions, as well as the letters granting reconsideration of the petitions, will be available in the docket for the CAIR (OAR–2003–0053).

SO_2 trading program, the owners and operators must provide a tonnage equivalent of allowances equaling 3 times (including a one-for-one offset) the tonnage of the excess emissions. As a result, the owners and operators may be liable, for a given ton of excess emissions, for both the offset and dollar penalty under the Acid Rain Program and the three-for-one allowance deduction.

Under the proposed revisions, for a given ton of SO_2 excess emissions at a source, the owners and operators will be liable for either the offset and dollar penalty under the Acid Rain Program or the three-for-one allowance deduction under the CAIR trading program. EPA believes that the Acid Rain dollar penalty, which is currently about $3,000 per ton of excess emissions (due to the inflation adjustment of the original $2,000 per ton penalty) is sufficiently large to provide a strong incentive for compliance with the allowance-holding requirement with regard to any tons of excess emissions under the Acid Rain Program. Under the proposal, any tons of excess emissions that a source under both the Acid Rain and CAIR trading programs has beyond the Acid Rain Program excess emissions would be subject to the three-for-one allowance deduction under the CAIR trading program. The EPA maintains that it is unnecessary to apply to a given ton of excess emissions both the Acid Rain and CAIR trading program penalties. The EPA also notes that the proposed revisions would address only the automatic penalties under the two programs and would not affect in any way the ability to impose, through enforcement actions, additional discretionary civil or criminal penalties.

The second category of revisions to the CAIR model trading rules includes those necessary to integrate the State CAIR trading programs with the appropriate Federal CAIR trading programs. As discussed above in Section VI of the preamble, EPA's intention is that the State CAIR trading programs for those States with approved SIP revisions and the Federal CAIR trading programs for those States without approved SIP revisions (or with only approved abbreviated SIP revisions) would all operate together as integrated trading programs, one integrated program covering NO_X annual emissions, one covering SO_2 annual emissions, and one covering NO_X ozone season emissions. Certain revisions to the CAIR model trading programs (and certain analogous provisions in the Federal CAIR trading programs) are necessary to accomplish this integration. For example, the definition of ''CAIR NO_X allowance'' is revised in order to ensure that NO_X allowances issued in a Federal CAIR NO_X annual trading program are treated the same in the State CAIR NO_X annual trading program as (and so is interchangeable with) NO_X allowances issued in the latter program. The definitions of ''CAIR SO_2 allowance'' and ''CAIR NO_X Ozone Season allowance'' are similarly revised.

The third category of revisions includes minor corrections of the CAIR model trading program regulations. These changes are intended to facilitate federal implementation of the CAIR and ensure consistency between State CAIR trading programs and the Federal CAIR trading programs by removing ambiguities in the CAIR. For example, certain provisions of the current CAIR SO_2 model trading rule reference non-existent provisions about SO_2 allowance allocations. EPA is proposing to remove the provisions that include these references.

By further example, the CAIR NO_X model trading rule requires the Administrator to record allocations submitted by the States for 2009 by December 1, 2006. However, since the SIP revisions that include such allocations are not due until September 11, 2006, it is highly unlikely that the SIP revisions will be approved by EPA in time for the allocations to be recorded by December 1, 2006. CAIR NO_X allowance allocations should not be recorded, and thereby be tradable in the allowance market, before the SIP revision on which the allocations are based is final. It would be highly disruptive to the allowance market if allocations that could be recorded and traded could subsequently be rendered invalid due to disapproval of the SIP revision on which the allocations are based. For this reason, EPA is proposing to remove the deadline for recordation of the allocations for existing units for the first set of years submitted in the SIP revision, but to retain the deadlines for recordation for the subsequent allocations.

VIII. What Are the Revisions to the Acid Rain Program?

EPA is also proposing in today's action a few revisions to the Acid Rain Program regulations. Most of the proposed revisions are changes to the administrative appeal procedures in part 78 of the Acid Rain Program regulations in order to make those procedures applicable to all final decisions of the Administrator under the Federal CAIR trading programs. In the CAIR, part 78 was revised to make those administrative appeal procedures apply to the Administrator's final decisions under the State CAIR trading programs. The part 78 revisions in today's proposal are analogous to those revisions made in the CAIR and are necessary to provide consistent appeal procedures to sources subject to the CAIR FIP.

The remaining provisions aim to facilitate interaction between the EPA-administered Federal CAIR trading programs, any EPA-administered State CAIR trading programs, and the Acid Rain Program. A number of these proposed revisions involve minor changes to language in some certifications included in the certificate of representation for designated representatives and in some certifications by authorized account representatives for general accounts. Analogous minor revisions are proposed for provisions describing the relationship of the designated representative to the owners or operators of the sources and units represented and of the authorized account representative to the owners of the allowances in the general account involved. The purpose of these proposed revisions is to make the wording of these Acid Rain Program provisions and certifications essentially the same as the analogous provisions and certifications in the State and Federal CAIR trading programs in order to streamline the requirements and the forms that must be submitted. Many sources are likely to be subject to both the Acid Rain Program and the CAIR trading programs.

Some of the proposed revisions are related to the change, finalized in the CAIR rulemaking, from unit-level to source-level compliance with the Acid Rain Program SO_2 trading program. For example, EPA is proposing to remove a provision that allows two designated representatives for the same source under certain circumstances. While it was workable to have one designated representative for one, non-opt-in unit at the source and a different designated representative for another, opt-in unit at the same source where compliance with the allowance-holding requirement was achieved unit-by-unit, this is not workable where compliance is at the source-level and one individual must be responsible for compliance by all units at the source.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency

must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In view of its important policy implications and potential effect on the economy of over $100 million, this action has been judged to be an economically ''significant regulatory action'' within the meaning of the Executive Order. As a result, today's action was submitted to OMB for review. The FIP proposal represents a federal mandate to implement the recently published CAIR (March 2005) covering the same set of air pollution emission reductions in the event States fail to implement CAIR. The section 126 proposal would impose regulatory requirements similar to CAIR in the States that significantly contribute to downwind emissions in North Carolina. For this reason, EPA is relying on the economic analysis conducted for CAIR entitled ''Regulatory Impact Analysis of the Final Clean Air Interstate Rule'' (March 2005) to serve as the analysis for these rulemakings. The costs and benefits presented in this economic analysis are an accurate representation of the benefits and costs of the FIP. The benefits and costs of the section 126 action would be a subset of the benefits and costs associated with CAIR, because only a subset of CAIR-affected States would be affected.

B. Paperwork Reduction Act

EPA believes that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requirements of this rule are satisfied through the Information Collection Request (ICR) (EPA ICR number 2152.02) submitted to the OMB for review and approval on May 12, 2005 as part of the Clean Air Interstate Rule (CAIR) (70 FR25162–25405). The ICR describes the nature of the information collection and its estimated burden and cost associated with that final rule. In cases where information is already collected by a related program, the ICR takes into account only the additional burden. (This situation arises in States that are also subject to requirements of the Consolidated Emissions Reporting Rule (EPA ICR number 0916.10; OMB control number 2060–0088) or for sources that are subject to the Acid Rain Program (EPA ICR number 1633.13; OMB control number 2060–0258) or NO_X SIP Call (EPA ICR number 1857.03; OMB number 2060–0445) requirements.)

The burden of today's proposed rule is essentially the same as the burden estimated for the CAIR. There is a modest transfer of burden from the States to EPA if the federal plan is implemented rather than the CAIR State plan. The overall total burden is essentially unchanged.

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, after appearing in the preamble of the final rule, are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.'' Small entities include small businesses, small organizations and small governmental jurisdictions.

For the purposes of this rulemaking, EPA defined small entities according to the following three criteria:

(1) A small business according to the Small Business Administration size standards by the North American Industry Classification System (NAICS) category of the owning entity. The range of small business size standards for electric utilities is 4 billion kilowatt-hours of production or less;

(2) a small government jurisdiction that is a government of a city, county, town, district, or special district with a population of less than 50,000; and

(3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Table IX–1 lists entities potentially affected by this proposed rule with applicable NAICS code.

Category	NAICS code [b]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government	[c] 221112	Fossil fuel-fired electric utility steam generating units owned by the federal government.
State/Local/Tribal Government	[c] 221112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[a] Include NAICS categories for source categories that own and operate electric generating units only.
[b] North American Industry Classification System.
[c] Federal, state, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

1. Small Business Advocacy Review Panel

As required by section 609(b) of the RFA, as amended by SBREFA, EPA convened a Small Business Advocacy Review Panel (SBAR Panel or Panel) and conducted outreach to small entities representatives (SERs) to obtain the advice and recommendations of small entities that potentially would be subject to the rule's requirements.

On April 27, 2005, EPA's Small Business Advocacy chairperson convened a SBAR Panel under section

609(b) of the RFA, as amended by SBREFA. For this proposal, in addition to the EPA Small Business Advocacy chairperson, the Panel consisted of EPA's Director of Air Quality Strategies and Standards Division within the Office of Air and Radiation, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of Small Business Administration (SBA).

As described below, this Panel conducted outreach to SERs and completed a report on this proposed action. The Panel Report provides background information on the proposal as it was being developed and the types of small entities that may be subject to the proposal, describes efforts to obtain the advice and recommendations of representatives of those small entities, summarizes the comments that have been received to date from those representatives, and presents the findings and recommendations of the Panel. The Panel Report, written comments from the SERs, the Initial Regulatory Flexibility Analysis (discussed below), and other information are contained in the docket for this rulemaking. The Panel Report is also available on the EPA's Web site at *http://www.epa.gov/sbrefa.* It is important to note that the Panel's findings and discussions are based on the information available at the time the Panel Report was drafted.

Prior to convening the SBAR Panel, EPA had several discussions and a conference call with small entities that could be affected by this rule. In consultation with SBA, EPA invited 16 stakeholders to participate in its outreach efforts on this proposal. On April 4, 2005, EPA held conference call with the potential SERs and invited representatives from the Office of Advocacy of the SBA and the Office of Information and Regulatory Affairs within the OMB to the call. During this call, EPA presented an overview of the SBREFA process, an explanation of the planned CAIR FIP and Section 126 rulemaking, and technical background on such information as control options and costs. Subsequent to the meeting, the stakeholders submitted follow-up comments in writing.

On May 5, 2005, the SBAR Panel invited the SERs to an outreach meeting and provided them with additional background information for their consideration. These materials included the previously provided background on the potential action and pollutants of interest, as well as information the relevant States and further technical and economic information about affected entities. The outreach meeting occurred on May 24, 2005, followed by written comments from some of the SERs. Written comments were summarized in the Panel Report and can be found in the docket.

The SBAR Panel considered the oral and written comments of the SERs in preparing the final Panel Report discussed above. The primary topic of the Panel discussion was the applicability of the FIP to the various categories of small entity-owned EGUs, the costs the proposal could potentially impose, and the advantages and disadvantages of implementing any of four regulatory flexibility alternatives. Additional topics included monitoring and reporting provisions and overlap with existing federal rules.

The SBAR Panel process for today's action was conducted before the proposed proposal was fully drafted. The Panel holds its discussions and makes its report at a preliminary stage of the rule development. The Panel discussions and report provide the Agency with an opportunity to identify and explore potential ways of shaping the proposal to minimize the burden of the proposal on small entities while achieving the purpose of the proposed action.

The SBAR Panel discussions for this proposal focused on the objectives and general outline of the CAIR FIP and Section 126 Response. The EPA also explained to the Panel that the proposal would be very similar to the CAIR model trading rules and provided the Panel with analyses that were conducted for CAIR. The Panel considered that the proposal would need to obtain the same emission reductions as would be achieved under CAIR and that the proposal would be designed to work in concert with the CAIR trading rules.

The action proposed today includes certain revisions to the Acid Rain Program and the final CAIR proposed in conjunction with the CAIR FIP and section 126 response. These revisions are intended to facilitate federal implementation of the CAIR, and address the interaction between the proposed EPA-administered federal CAIR trading program and any EPA-administered State CAIR trading programs. These revisions support the CAIR FIP and the 126 response extensively discussed by the Panel and are explained in greater detail in sections VII and VIII above.

To the extent that the Panel Report or the initial regulatory flexibility analysis for today's proposal address any proposed changes to the CAIR, EPA notes that 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 (D.C. Cir., 2000), *cert. den.* 121 S.Ct. 225, 149 L.Ed.2d 135 (2001). The proposed revisions to the CAIR would not establish requirements directly applicable to small entities and, like the CAIR (70 FR at 25420), do not require a regulatory flexibility analysis.

2. Initial Regulatory Flexibility Analysis

Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of this proposal on small entities along with regulatory alternatives that could reduce that impact. The IRFA is available for review in the docket for today's rulemaking and is summarized in the sections below.

a. Background on Today's Proposal and the IRFA

This action proposes Federal Implementation Plans (FIPs) for all States affected by the Clean Air Interstate Rule (CAIR). The FIPs would serve as a backstop measure to achieve the emission reductions requirements established by the CAIR until States have approved State implementation plans (SIPs) to achieve the reductions. The Agency's authority to promulgate FIPs is contained in section 110 of the CAA.

This action also proposes EPA's response to a petition submitted by the State of North Carolina under section 126 of the CAA. The EPA is proposing Federal cap and trade programs for electric generation units (EGUs) as the control strategy for the FIPs as well as the section 126 action. The proposed Federal cap and trade programs are virtually identical to the CAIR model trading rules.

The EPA is also proposing certain revisions to the CAIR and the Acid Rain Program. Sections I through IV in today's preamble explain in more detail the reasons the Agency is considering this action, as well as the Agency's objectives and the legal basis for the proposed action.

The CAIR does not establish specific requirements applicable to small entities. Instead, the CAIR requires states to develop, adopt and submit SIP revisions that will achieve the necessary SO_2 and NO_X reductions, leaving to states the task of determining how and by which entities these reductions will be obtained. Although not required by the RFA, EPA conducted an analysis of the impact of regulations implementing the CAIR model trading rules on small

entities. The Federal cap and trade programs in today's proposal are virtually identical to the CAIR model trading rules. For the small entity analysis conducted for CAIR we analyzed the potential impacts that regulations implementing the model trading rules in the CAIR might have on small entities. EPA expects the impacts of the CAIR FIP trading programs in today's proposal to be identical to the impacts we analyzed for regulations implementing the model trading rules in the CAIR. Therefore, the small entity analysis that the Agency conducted for CAIR rulemaking provides the basis for the IRFA for today's proposal. The CAIR small entity analysis is contained in chapter 8 of the Regulatory Impact Analysis for the Final Clean Air Interstate Rule, March 2005, available in the docket for the CAIR rulemaking.

b. Potentially Affected Small Entities

Approximately 140 of the estimated 3,000 EGUs potentially affected by today's action are owned by the 58 potentially affected small entities identified by EPA. Of the 140, 49 units are owned by small entities that also share ownership with large entities. Of these units, 34 are believed to be more than 50 percent owned by a large entity. An additional 189 units owned by small entities in these states could be exempted because they have a nameplate capacity less than 25 MW. The above estimates include a number of units that are owned jointly by small and non-small entities. In addition, these estimates represent the maximum number of units potentially affected by the CAIR FIP. Only units in states that fail to submit an approved SIP would be directly regulated under the CAIR FIP. The actual number of affected units will depend on the number of states that do not submit a SIP or do not get their SIP submittal approved.

c. Impact on Potentially Affected Small Entities

EPA has assessed the potential impact of today's action on small entities. This analysis is based in large part on EPA's prior analysis of the potential impact of regulations implementing the CAIR model trading programs in the CAIR region. The analysis of the model trading programs was based on the best information available at that time and assumed that 75 small entities could be affected by any eventual implementation of the trading programs. However, EPA subsequently determined that some of these 75 entities either did not meet the definition of a small entity, or had units that were no longer generating. EPA's final analysis thus concluded that only 58 entities would be affected by today's action. Because the Agency's analysis of small entity impacts was based on the earlier estimate of affected small entities (i.e., the impacts were analyzed based on 75 affected entities not 58 entities), the impact analysis would overstate the maximum potential impact of today's action on small entities.

Overall, EPA analysis suggested that about 445 MW of total small entity capacity, or 1.0 percent of total small entity capacity in the CAIR region, is projected to be uneconomic to maintain under regulations implementing the CAIR trading programs relative to the Base Case. In practice, units projected to be uneconomic to maintain may be ''mothballed'', retired, or kept in service to ensure transmission reliability in certain parts of the grid. Our IPM modeling is unable to distinguish between these potential outcomes.

Of the 75 initially identified as potentially impacted by regulations implementing the model trading programs, EPA determined that 29 might experience compliance costs in excess of one percent of revenues in 2010 and 46 might in 2015. Potentially affected small entities experiencing compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of CAIR.

Moreover, the decision to include only units greater than 25 MW in size exempts 185 small entities that would otherwise be potentially affected by today's actions. In the final CAIR, EPA stated its belief that it is reasonable to assume no further control of air emissions from these smaller EGUs. Available air emissions data indicate that the collective emissions from small EGUs with capacity less than or equal to 25 MW 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 units. In addition, the use of cap and trade in general will limit impacts on small entities relative to a less flexible command-and-control program.

EPA considered several additional suggestions raised during the SBAR panel process that would have changed the scope, and thus the impact, of today's action. One SER suggested exempting small gas turbines from the rule. The Panel did not recommend exempting small gas turbines from the program. The Panel believed that the reduced monitoring requirements for this set of sources under CAIR will provide a significant level of relief to these sources, which are low emitters of both NO_X and SO_2. According to EPA analysis, most of these sources are projected to be net sellers of allowances, and the maximum impact projected for any one of these sources in terms of the ratio of costs to electricity generation revenues is approximately 3 percent. Additionally, today's action does exempt a number of small gas turbines as a result of the 25 MW and below exemption. The SBAR Panel supported retaining this exemption in today's action.

d. Potential Reporting, Record Keeping, and Compliance Requirements

EPA also considered suggestions from the SBAR Panel regarding reporting and recordkeeping requirements of the proposed action. During the outreach to the SERs, one SER noted that EPA should coordinate emissions monitoring reporting among this and other related rules as much as possible. EPA has developed emission monitoring and reporting provisions intended to minimize the burden of reporting requirements on sources. Sources will submit one quarterly report that will account for emissions under any of the following programs that they are subject to: Title IV SO_2 and/or NO_X, Federal CAIR SO_2, annual NO_X and/or ozone season NO_X. Finally, as part of the FIP development process, EPA has coordinated FIP and SIP requirements as much as possible to minimize any conflicts in requirements that could occur if a State submitted a SIP that was approved by EPA and replaced the Federal CAIR trading rules.

e. Relevant Federal Rules

There are four Federal rules that may cover the same types of sources and pollutants as those covered in this proposal: The Clean Air Interstate Rule (CAIR), Regional Haze Rule, Acid Rain Program, and the NO_X SIP Call. During development of this proposal the Agency took great care to ensure that the proposed programs not conflict with other CAA programs. As discussed in detail elsewhere in this preamble, the Agency designed each of the elements of today's proposal—the CAIR FIP, section 126 response, revisions to CAIR and revisions to the Acid Rain Program—to work together. The Agency gave particular emphasis to the interaction between CAIR and the Acid Rain Program, since CAIR relies on the use of Acid Rain Program allowances for SO_2, and this feature of the program limits the flexibility of EPA in its design of regulatory flexibility alternatives for the CAIR FIP/126 rules. The Panel did not make specific recommendations in this area. EPA's decision to use the existing

SO_2 allocation from the Acid Rain Program is explained in greater detail in the preamble to the final CAIR (70 FR 25299).

f. Regulatory Flexibility Alternatives

The SBAR Panel discussed four options to provide additional flexibility to small entities:

Option 1. An alternative compliance method for units with low emissions, whereby facilities could adopt a voluntary limit on emissions;

Option 2. An option to buy allowances from EPA at a fixed price, which would protect units from market volatility in the price of allowances;

Option 3. Provide sources owned by small entities with a greater share of allowances, and;

Option 4. Recognize and utilize the existing flexibilities within the CAIR model trading rules.

In considering the four regulatory alternatives, the SBAR Panel evaluated the feasibility of implementing each option, as well as the extent to which the analysis of each option showed effective relief for financially-impacted small entities. Implementation of Options 1, 2, or 3 would require adjusting the number of allowances available to non-small-entity sources, in order to ensure that the overall reduction requirements of CAIR are achieved. As is discussed in Section 3 of the Panel Report, these adjustments could introduce administrative complexity and uncertainty in the case of SO_2 as to whether the reduction requirement is being met. The Panel also discussed how to set appropriate exemption levels, allowance adjustments, or price levels if EPA were to decide to implement one of the first three alternatives. Additionally, the Panel had to consider how to determine small entities' eligibility for potential relief, as well as treatment of sources that were primarily owned by large entities, but had minority ownership by small entities.

The SBAR Panel undertook detailed analysis of the four regulatory flexibility alternatives and of the comments and discussion provided by the small entity representatives during the SBAR Panel process. Consensus was not reached as to the final recommendation of the Panel. Two Panel members recommended that EPA pursue Option 4 as the means of providing flexibility to small entities under the proposed CAIR FIP and section 126 action. In general, this was due to the ability of the existing CAIR rule to provide a number of flexibilities to small entity sources, such as ability to trade and bank allowances, the inclusion of a compliance supplement pool for NO_X, and reduced monitoring requirements for some small units. In making this recommendation, these two Panel members also considered the possible trade-offs in terms of administrative ease and the ability to target sources that would need effective relief.

All SBAR Panel members agree that for the great majority of affected small entities, the CAIR model trading rules, or Option 4, provides the appropriate mechanism for limiting economic burdens, by allowing the purchase and sale of allowances in the market by all units. In the view of one Panel member, the Option 3 hardship approach best accommodates the needs of small entities with severe hardships and the burden of administering this added program element, while preserving the identical benefits of the CAIR program. Essentially, this Panel member suggested that EPA could provide meaningful relief to entities expected to experience severe hardship by setting aside some percentage of States' annual NO_X budgets, and providing these allowances to small entity sources that demonstrate the potential for severe economic hardship as a result of the proposed action. Analysis conducted by this Panel member suggested that setting aside approximately 15,000 NO_X allowances annually could provide significant relief to entities projected to experience severe hardship as a result of the proposed CAIR FIP and section 126 action.

The SBAR Panel did not recommend that EPA incorporate Option 1 or Option 2 into the CAIR FIP and section 126 action. Regarding Option 1, the Panel generally agreed that this option would not provide a mechanism for providing relief to many small entity sources. Additionally, EPA noted that this option was made available under the NO_X SIP call, and was used very sparsely. The majority of small entity representatives did not express support for this option. Option 2 could be implemented using either a safety valve price for small entity sources that falls below the projected allowance prices, or above projected allowance prices. Given the implementation issues discussed in Section 3 of the Report, and the uncertainty about what type of relief this option might provide, the Panel did not recommend that EPA consider this option further.

The EPA invites comment on all aspects of the proposal and its impacts on small entities. The EPA is accepting comment only on today's proposal. EPA is not accepting comment on the CAIR or otherwise reopening any issue decided in the CAIR for reconsideration or comment, except that we are taking comment specifically the revisions to the CAIR and the Acid Rain program that EPA is proposing in today's action, as well as on the proposed CAIR FIP, the Section 126 response, and the impacts of these proposals on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

The EPA is taking the position that the requirements of UMRA apply because this action could result in the establishment of enforceable mandates directly applicable to sources (including sources owned by State and local governments) that could result in costs greater than $100 million in any one year. The UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective or least-burdensome alternative that achieves the objectives of the rule.

EPA is relying upon the government entity analysis prepared for the final CAIR. The actual impacts on government entities of today's action would likely be less than those estimated in the analysis done for the CAIR because fewer States and individual sources are likely to be affected.

According to EPA's analysis, the total net economic impact on government-

owned entities is expected to be negative in both 2010 and 2015. However, IPM modeling projects that about 340 MW of municipality-owned capacity (about 0.4 percent of all subdivision, State and municipality capacity in the CAIR region) would be uneconomic to maintain under CAIR, beyond what is projected in the Base Case. In practice, units projected to be uneconomic to maintain may be ''mothballed'', retired, or kept in service to ensure transmission reliability in certain parts of the grid. Our IPM modeling is unable to distinguish between these potential outcomes.

Of the 81 potentially affected government entities considered in EPA's analysis, and the 265 government entities in the CAIR region that are included in EPA modeling, 19 may experience compliance costs in excess of one percent of revenues in 2010, and 38 may in 2015, based on our assumptions of how the affected States implement control measures to meet their emissions budgets as set forth CAIR.

Government entities projected to experience compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of this rulemaking. However, the majority of entities facing potentially significant impacts are located in States with regulated electricity markets, where they have the ability to pass some or all of their compliance cost on to ratepayers. In addition, the decision to include only units greater than 25 MW in size exempts 179 government entities that would otherwise be potentially affected by regulations implementing the CAIR trading programs. 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.

Under section 203 of UMRA, 2 U.S.C. 1533, before EPA establishes any regulatory requirements ''that might significantly or uniquely affect small governments,'' EPA must have developed a small government agency plan. The plan must provide for notifying potentially affected small governments; enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements. The requirements do not distinguish EGUs based on ownership, either for those units that are included within the scope of the rule or for those units that are exempted by the generating capacity cut-off. Consequently, the rule has no requirements that uniquely affect small governments that own or operate EGUs within the SIP call region. With respect to the significance of the rule's provisions, EPA's UMRA analysis demonstrates that the economic impact of the rule will not significantly affect State or municipal EGUs or non-EGUs, either in terms of total cost incurred and the impact of the costs on revenue, or increased cost of electricity to consumers. Therefore, development of a small government plan under section 203 of the Act is not required.

During the CAIR rulemaking process, EPA prepared a written statement consistent with the requirements of section 202 of the UMRA. Furthermore, in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA carried out consultations with the governmental entities potentially affected by this rule during the CAIR rulemaking process.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These effects would not occur from the final rule itself because it is the provisions of the CAA that require EPA, after a State has failed to submit a SIP or a complete SIP, to make a finding to that effect and then to promulgate a FIP within 2 years of the finding. Although EPA would be exercising discretion to promulgate the FIP within the early part of the 2-year period, EPA would rescind the FIP for each State that submits a SIP that EPA approves, and, if the FIP remains, sources are not required to implement controls until after the close of the 2-year period. Moreover, as emphasized throughout the preamble, States are not required to adopt the FIP provisions, or any particular portion thereof, in order for EPA to approve their SIPs. Thus, Executive Order 13132 does not apply to this proposed rule.

Even so, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA consulted with State and local officials early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. The EPA is including a number of provisions for States in the proposed rule so as not to constrain States' abilities to complete approvable SIP revisions, such as the ability to submit abbreviated SIP revisions, and the intent to withdraw the FIP upon approval of State SIP revisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This proposal does not have ''Tribal implications'' as specified in Executive Order 13175.

This proposal addresses transport of pollution for precursors of ozone and $PM_{2.5}$. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations clarify the statutory obligations of States and Tribes that develop plans to implement these rules. The Tribal Authority Rule (TAR) gives 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.

This proposal does not have Tribal implications as defined by Executive Order 13175. It do not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented a federally-enforceable air quality management program under the CAA at this time. Furthermore, this proposal does not affect the relationship or distribution of power and responsibilities between the Federal Government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal Government

and Tribes in developing plans to attain the NAAQS, and this proposal does nothing to modify that relationship. Because this proposal does not have Tribal implications, Executive Order 13175 does not apply.

If one assumes a Tribe is implementing a Tribal Implementation Plan, today's proposal could have implications for that Tribe, but 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 FIP for the CAIR region as implemented by State, local, and Tribal governments to be approximately $2.4 billion in 2010 and $3.6 billion in 2015 (1999$). There are currently very few emissions sources in Indian country that could be affected by these rules and the percentage of Tribal land that will be impacted is very small. For 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 CAIR rule. The EPA encouraged Tribal input at an early stage. Also, EPA held periodic meetings with the States and the Tribes during the technical development of CAIR. Three meetings were held with the Crow Tribe, where the Tribe expressed concerns about potential impacts of the rule on their coal mine operations. In addition, EPA held three calls with Tribal environmental professionals to address concerns specific to the Tribes. These discussions have given EPA valuable information about Tribal concerns regarding the development of CAIR. During the CAIR rulemaking process, the EPA provided briefings for Tribal representatives and the newly formed National Tribal Air Association (NTAA), and other national Tribal forums. Input from Tribal representatives was taken into consideration in development of CAIR.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These actions are not subject to the Executive Order, because they do not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategies in these proposals would further improve air quality and would further improve children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 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 Executive Order 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) a significant regulatory action under Executive Order 12866 or any successor order, and (ii) likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) designated by the Administrator of the Office of Information and Regulatory Affairs as a ''significant energy action.'' This proposed rule is a significant regulatory action under Executive Order 12866, and this rule may have a significant adverse effect on the supply, distribution, or use of energy. These impacts are detailed in the final CAIR (70 FR 25315).

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's proposed rule would implement requirements largely identical to the requirements in the CAIR. This proposal would require all sources that participate in the trading programs under part 97 (analogous to the CAIR SIP trading programs under part 96) to meet the applicable monitoring requirements of part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under Section 75.66 before they are used under part 75.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,[22] 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

[22] 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.

appropriate comparison group.'' (EPA, 1998)

In accordance with Executive Order 12898, the Agency has considered whether these proposals, if promulgated, may have disproportionate negative impacts on minority or low-income populations. The Agency expects these proposals would lead to reductions in air pollution and exposures generally. For this reason, negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected.

List of Subjects

40 CFR Parts 51 and 52

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Parts 72, 73, 74, and 78

Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Parts 96 and 97

Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 1, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, parts 51, 52, 72, 73, 74, 78, 96, and 97 of chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

§ 51.123 [Amended]

2. Section 51.123 is amended by:

a. In paragraph (o)(2)(ii)(B), replace the words ''for the year after the year of'' by the words ''for the 4th year after the year of'';

b. Add a new paragraph (p);

c. In paragraph (cc), amend the definition of ''Electric generating unit'' or ''EGU'' by:

i. In paragraph (1) of the definition, redesignate the paragraph as paragraph ''(1)(i)'', replace the words ''since the start-up'' with the words ''since the later of November 15, 1990 or the start-up'', and add a new paragraph (1)(ii); and

ii. Revise paragraph (2) of the definition; and

d. In paragraph (cc), add a new definition for ''Solid waste incineration unit''; and

e. Add a new paragraph (ee) to read as follows:

§ 51.123 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule.

* * * * *

(p) Notwithstanding any other provision of this section, a State may adopt, and include in a SIP revision submitted by March 31, 2007, regulations relating to the Federal CAIR NO_X Annual Trading Program under subparts AA through HH of part 97 of this chapter as follows:

(1) The State may adopt, as CAIR NO_X allowance allocation provisions replacing the provisions in subpart EE of part 97 of this chapter:

(i) Allocation provisions substantively identical to subpart EE of part 96 of this chapter, under which the permitting authority makes the allocations; or

(ii) Any methodology for allocating CAIR NO_X allowances to individual sources under which the permitting authority makes the allocations, provided that:

(A) The State's methodology must not allow the permitting authority to allocate CAIR NO_X allowances for a year in excess of the amount in the State's Annual EGU NO_X budget for such year.

(B) The State's methodology must require that, for EGUs commencing operation before January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by September 30, 2007 for 2009, 2010, and 2011 and by October 31, 2008 and October 31 of each year thereafter for the 4th year after the year of the notification deadline. The State's methodology must also provide that, if the permitting authority fails to submit to the Administrator such allocations in accordance with such applicable deadline, the Administrator will assume that the allocations of CAIR NO_X 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 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period in 2014.

(C) The State's methodology must require that, for EGUs commencing operation on or after January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31 of the year for which the CAIR NO_X allowances are allocated. The State's methodology must also provide that, if the permitting authority fails to submit to the Administrator such allocations in accordance with such applicable deadline, the Administrator will assume that the allocations of CAIR NO_X 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 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period in 2014 and except that any CAIR NO_X unit that would otherwise be allocated CAIR NO_X allowances under paragraph (p)(1)(ii)(B) of this section, as well as under this paragraph, for the applicable control period will be assumed to be allocated no CAIR NO_X allowances under this paragraph for the applicable control period.

(2) The State may adopt, as compliance supplement pool provisions replacing the provisions in § 97.143 of this chapter:

(i) Provisions for allocating the State's compliance supplement pool that are substantively identical to § 97.143 of this chapter, except that the permitting authority makes the allocations and the Administrator records the allocations made by the permitting authority; or

(ii) Provisions for allocating the State's compliance supplement pool that are substantively identical to § 96.143 of this chapter.

(3) The State may adopt CAIR opt-in unit provisions as follows:

(i) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X allowances for CAIR opt-in units, that are substantively identical to subpart II of part 96 of this chapter and the provisions of subparts AA through HH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied;

(ii) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and

recordation of CAIR NO_X allowances for CAIR opt-in units, that are substantively identical to subpart II of part 96 of this chapter and the provisions of subparts AA through HH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.188(b) of this chapter and the provisions of subpart II of part 96 of this chapter that apply only to units covered by § 96.188(b) of this chapter; or

(iii) Provisions for applications for CAIR opt-in units, including provisions for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X allowances for CAIR opt-in units, that are substantively identical to subpart II of part 96 of this chapter and the provisions of subparts AA through HH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.188(c) of this chapter and the provisions of subpart II of part 96 of this chapter that apply only to units covered by § 96.188(c) of this chapter.

(cc) * * *

Electric generating unit or *EGU* means:

(1)(i) * * *

(ii) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (1)(i) of this definition, is not an electric generating unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit on the date on which it first serves such generator.

(2) A unit that meets the requirements set forth in paragraphs (2)(i)(A), (2)(ii)(A), or (2)(ii)(B) of this definition shall not be an electric generating unit:

(i)(A) A unit:

(1) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(2) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe 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.

(B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraph (1)(i)(A) of this definition for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (1)(i)(A)(*2*) of this definition.

(ii)(A) A unit commencing operation before January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(B) A unit commencing operation on or after January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(C) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (2)(ii)(A) or (B) of this definition for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

(ee) Notwithstanding any other provision of this section, a State may adopt, and include in a SIP revision submitted by March 31, 2007, regulations relating to the Federal CAIR NO_X Ozone Season Trading Program under subparts AAAA through HHHH of part 97 of this chapter as follows:

(1) The State adopt, as applicability provisions replacing the provisions in § 97.304 of this chapter, provisions for applicability that are substantively identical to the provisions in § 96.304 of this chapter expanded to include all non-EGUs subject to the State's emissions trading program approved under § 51.121(p).

(2) The State may adopt, as CAIR NO_X Ozone Season allowance allocation provisions replacing the provisions in subpart EEEE of part 97 of this chapter:

(i) Allocation provisions substantively identical to subpart EEEE of part 96 of this chapter, under which the permitting authority makes the allocations; or

(ii) Any methodology for allocating CAIR NO_X Ozone Season allowances to individual sources under which the permitting authority makes the allocations, provided that:

(A) The State may provide for issuance of an amount of CAIR Ozone Season NO_X allowances for an ozone season, in addition to the amount in the State's Ozone Season EGU NO_X Budget for such ozone season, not exceeding the portion of the State's State trading program budget, under the State's emissions trading program approved under § 51.121(p), attributed to the non-EGUs that the applicability provisions in § 96.304 of this chapter are expanded to include under paragraph (ee)(1) of this section.

(B) The State's methodology must not allow the State to allocate CAIR Ozone Season NO_X allowances for an ozone season in excess of the amount in the State's Ozone Season EGU NO_X Budget for such ozone season plus any additional amount of CAIR Ozone Season NO_X allowances issued under paragraph (ee)(2)(ii)(A) of this section for such ozone season.

(C) The State's methodology must require that, for EGUs commencing operation before January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X Ozone Season allowances by September 30, 2007 for 2009, 2010, and 2011 and by October 31, 2008 and October 31 of each year thereafter for the 4th year after the year of the notification deadline. The State's methodology must also provide that, if the permitting authority fails to submit to the Administrator such allocations in accordance with such applicable deadline, the Administrator will assume that the allocations of CAIR NO_X Ozone Season 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 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period in 2014.

(D) The State's methodology must require that, for EGUs commencing operation on or after January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X Ozone Season allowances by July 31 of the year for which the CAIR NO_X Ozone Season allowances are allocated. The State's methodology must also provide that, if the permitting authority fails to submit to the Administrator such allocations in accordance with such applicable deadline, the Administrator will assume that the allocations of CAIR NO_X 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 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period in 2014 and except that any CAIR NO_X unit that would otherwise be allocated CAIR NO_X allowances under paragraph (ee)(2)(ii)(C) of this section, as well as under this paragraph, for the applicable control period will be assumed to be allocated no CAIR NO_X allowances under this paragraph for the applicable control period.

(3) The State may adopt CAIR opt-in unit provisions as follows:

(i) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X Ozone Season allowances for CAIR opt-in units, that are substantively identical to subpart IIII of part 96 of this chapter and the provisions of subparts AAAA through HHHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied;

(ii) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X Ozone Season allowances for CAIR opt-in units, that are substantively identical to subpart IIII of part 96 of this chapter and the provisions of subparts AAAA through HHHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.388(b) of this chapter and the provisions of subpart IIII of part 96 of this chapter that apply only to units covered by § 96.388(b) of this chapter; or

(iii) Provisions for applications for CAIR opt-in units, including provisions for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X allowances for CAIR opt-in units, that are substantively identical to subpart IIII of part 96 of this chapter and the provisions of subparts AAAA through HHHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.388(c) of this chapter and the provisions of subpart IIII of part 96 of this chapter that apply only to units covered by § 96.388(c) of this chapter.

§ 51.124 [Amended]

3. Section 51.124 is amended by:

a. In paragraph (q), amend the definition of ''Electric generating unit'' or ''EGU'' by:

i. In paragraph (1) of the definition, redesignate the paragraph as paragraph ''(1)(i)'', replace the words ''since the start-up'' with the words ''since the later of November 15, 1990 or the start-up'', and add a new paragraph (1)(ii); and

ii. Revise paragraph (2) of the definition; and

b. In paragraph (q), add a new definition for ''Solid waste incineration unit''; and

c. Add a new paragraph (r) to read as follows:

§ 51.124 Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule.

* * * * *

(q) * * *

Electric generating unit or *EGU* means:

(1)(i) * * *

(ii) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (1)(i) of this definition, is not an electric generating unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit on the date on which it first serves such generator.

(2) A unit that meets the requirements set forth in paragraphs (2)(i)(A), (2)(ii)(A), or (2)(ii)(B) of this definition shall not be an electric generating unit:

(i)(A) A unit:

(1) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(2) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe 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.

(B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraph (1)(i)(A) of this definition for at least one calendar year but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (1)(i)(A)*(2)* of this definition.

(ii)(A) A unit commencing operation before January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(B) A unit commencing operation on or after January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(C) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (2)(ii)(A) or (B) of this definition for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the

first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

(r) Notwithstanding any other provision of this section, a State may adopt, and include in a SIP revision submitted by March 31, 2007, regulations relating to the Federal CAIR SO_2 Trading Program under subparts AAA through HHH of part 97 of this chapter as follows. The State may adopt the following CAIR opt-in unit provisions:

(1) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR SO_2 allowances for CAIR opt-in units, that are substantively identical to subpart III of part 96 of this chapter and the provisions of subparts AAA through HHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied;

(2) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR SO_2 allowances for CAIR opt-in units, that are substantively identical to subpart III of part 96 of this chapter and the provisions of subparts AAA through HHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.288(b) of this chapter and the provisions of subpart III of part 96 of this chapter that apply only to units covered by § 96.288(b) of this chapter; or

(3) Provisions for applications for CAIR opt-in units, including provisions for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR SO_2 allowances for CAIR opt-in units, that are substantively identical to subpart III of part 96 of this chapter and the provisions of subparts AAA through HHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.288(c) of this chapter and the provisions of subpart III of part 96 of this chapter that apply only to units covered by § 96.288(c) of this chapter.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

2. Subpart A is amended by adding §§ 52.35 and 52.36 to read as follows:

§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule relating to emissions of nitrogen oxides?

The Federal CAIR NO_X Annual Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO_X). These provisions apply to sources in each State that is described in § 51.123(c)(1) and (2) of this chapter, Delaware, and New Jersey, each of which States is subject to a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(I) of the Clean Air Act for the $PM_{2.5}$ NAAQS. The Federal CAIR NO_X Ozone Season Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions for emissions of nitrogen oxides (NO_X) during the ozone season, as defined in § 97.302 of this chapter. These provisions apply to sources in each State that is described in § 51.123(c)(1) and (3) of this chapter, each of which States is subject to a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(I) of the Clean Air Act for the 8-hour ozone NAAQS. These provisions do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part, nor the obligations of States under the requirements of §§ 51.123 and 51.125 of this chapter.

§ 52.36 What are the requirements of the Clean Air Interstate Rule Federal Implementation Plans relating to emissions of sulfur dioxide?

The Federal CAIR SO_2 Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions for emissions of sulfur dioxide (SO_2). These provisions apply to sources in each State that is described in § 51.124(c) of this chapter, Delaware, and New Jersey, each of which States is subject to an EPA finding that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(I) of the Clean Air Act for the $PM_{2.5}$ NAAQS. These provisions do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part, nor the obligations of States under the requirements of §§ 51.124 and 51.125 of this chapter.

Subpart B—Alabama

3. Subpart B is amended by adding §§ 52.54 and 52.55 to read as follows:

§ 52.54 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Alabama and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.55 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Alabama and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart E—Arkansas

4. Subpart E is amended by adding §§ 52.184 to read as follows:

§ 52.184 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Arkansas and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading

Programs in part 97 of this chapter must comply with such applicable requirements.

Subpart H—Connecticut

5. Subpart H is amended by adding §§ 52.386 to read as follows:

§ 52.386 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Connecticut and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart I—Delaware

6. Subpart I is amended by adding §§ 52.440 and 52.441 to read as follows:

§ 52.440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Delaware and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in part 97 of this chapter must comply with such applicable requirements.

§ 52.441 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Delaware and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart J—District of Columbia

7. Subpart J is amended by adding §§ 52.484 and 52.485 to read as follows:

§ 52.484 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the District of Columbia and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.485 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the District of Columbia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart K—Florida

8. Subpart K is amended by adding §§ 52.540 and 52.541 to read as follows:

§ 52.540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Florida and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.541 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Florida and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart L—Georgia

9. Subpart L is amended by adding §§ 52.584 and 52.585 to read as follows:

§ 52.584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Georgia and for which requirements are set forth under Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.585 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Georgia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart O—Illinois

10. Subpart O is amended by adding §§ 52.745 and 52.746 to read as follows:

§ 52.745 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Illinois and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.746 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Illinois and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart P—Indiana

11. Subpart P is amended by adding §§ 52.789 and 52.790 to read as follows:

§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Indiana and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.790 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Indiana and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart Q—Iowa

12. Subpart Q is amended by adding § 52.840 and 52.841 to read as follows:

§ 52.840 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Iowa and for which requirements are set forth under the Federal CAIR NO_X Annual

and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.841 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Iowa and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart S—Kentucky

14. Subpart S is amended by adding §§ 52.940 and 52.941 to read as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Kentucky and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.941 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Kentucky and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart T—Louisiana

15. Subpart T is amended by adding §§ 52.984 and 52.985 to read as follows:

§ 52.984 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Louisiana and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.985 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Louisiana and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart V—Maryland

16. Subpart V is amended by adding §§ 52.1084 and 52.1085 to read as follows:

§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Maryland and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1085 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Maryland and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart W—Massachusetts

17. Subpart W is amended by adding §§ 52.1140 to read as follows:

§ 52.1140 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Massachusetts and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart X—Michigan

18. Subpart X is amended by adding §§ 52.1186 and 52.1187 to read as follows:

§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Michigan and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1187 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Michigan and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart Y—Minnesota

19. Subpart Y is amended by adding §§ 52.1240 and 52.1241 to read as follows:

§ 52.1240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Minnesota and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1241 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Minnesota and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart Z—Mississippi

20. Subpart Z is amended by adding §§ 52.1284 and 52.1285 to read as follows:

§ 52.1284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Mississippi and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1285 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Mississippi and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this

chapter must comply with such applicable requirements.

Subpart AA—Missouri

21. Subpart AA is amended by adding §§ 52.1341 and 52.1342 to read as follows:

§ 52.1341 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Missouri and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1342 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Missouri and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart FF—New Jersey

22. Subpart FF is amended by adding §§ 52.1584 and 52.1585 to read as follows:

§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of New Jersey and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in part 97 of this chapter must comply with such applicable requirements.

§ 52.1585 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of New Jersey and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart HH—New York

23. Subpart HH is amended by adding §§ 52.1684 and 52.1685 to read as follows:

§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of New York and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1685 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of New York and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart II—North Carolina

24. Subpart II is amended by adding §§ 52.1784 and 52.1785 to read as follows:

§ 52.1784 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of North Carolina and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1785 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of North Carolina and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart KK—Ohio

25. Subpart KK is amended by adding §§ 52.1891 and 52.1892 to read as follows:

§ 52.1891 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Ohio and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1892 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Ohio and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart NN—Pennsylvania

26. Subpart NN is amended by adding §§ 52.2040 and 52.2041 to read as follows:

§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Pennsylvania and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2041 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Pennsylvania and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart PP—South Carolina

27. Subpart PP is amended by adding §§ 52.2140 and 52.2141 to read as follows:

§ 52.2140 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of South Carolina and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2141 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of South Carolina and for which requirements are

set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart RR—Tennessee

28. Subpart RR is amended by adding §§ 52.2240 and 52.2241 to read as follows:

§ 52.2240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Tennessee and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2241 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Tennessee and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart SS—Texas

29. Subpart SS is amended by adding §§ 52.2283 and 52.2284 to read as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Texas and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Texas and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart VV—Virginia

30. Subpart VV is amended by adding §§ 52.2440 and 52.2441 to read as follows:

§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Virginia and for which requirements are set forth under the Federal CAIR NO_X Annual and Seasonal Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2441 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Virginia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart XX—West Virginia

31. Subpart XX is amended by adding §§ 52.2540 and 52.2541 to read as follows:

§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of West Virginia and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2541 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of West Virginia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart YY—Wisconsin

32. Subpart YY is amended by adding §§ 52.2587 and 52.2588 to read as follows:

§ 52.2587 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Wisconsin and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2588 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Wisconsin and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

PART 72—[Amended]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

§ 72.7 [Amended]

2. Section 72.7 is amended by:

a. In paragraph (f)(4)(i), replace the words ''become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter'' with the words '', for purposes of applying parts 70 and 71 of this chapter, shall be treated as an affected unit under the Acid Rain Program''; and

b. Revise paragraph (f)(2) to read as follows:

§ 72.7 New units exemption.

* * * * *

(f) * * *

(2) For any period for which a unit is exempt under this section:

(i) For purposes of applying parts 70 and 71 of this chapter, the unit shall not be treated as an affected unit under the Acid Rain Program and shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(ii) The unit shall not be eligible to be an opt-in source under part 74 of this chapter.

* * * * *

§ 72.8 [Amended]

3. Section 72.8 is amended by:

a. In paragraph (d)(6)(i) introductory text, replace the words ''become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter'' with the words '', for purposes of applying parts 70 and 71 of this chapter, shall be treated as an affected unit under the Acid Rain Program''; and

b. Revise paragraph (d)(4) to read as follows:

§ 72.8 Retired units exemption.

* * * * *

(d) * * *

(4) For any period for which a unit is exempt under this section:

(i) For purposes of applying parts 70 and 71 of this chapter, the unit shall not

be treated as an affected unit under the Acid Rain Program and shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(ii) The unit shall not be eligible to be an opt-in source under part 74 of this chapter.

* * * * *

§ 72.20 [Amended]

4. Section 72.20 is amended by, in paragraph (b), replace the words ''his or her actions'' by the words ''his or her representations, actions''.

§ 72.22 [Amended]

5. Section 72.22 is amended by, in paragraph (b), replace the words ''any action, representation, or failure to act'' with the words ''any representation, action, inaction, or submission'' whenever they appear.

§ 72.23 [Amended]

6. Section 72.23 is amended by, in paragraphs (a), (b), and (c)(1), replace the words ''submissions, actions, and inactions'' with the words ''representations, actions, inactions, and submissions'' whenever they appear.

§ 72.24 [Amended]

7. Section 72.24 is amended by:

a. In paragraph (a)(6), replace the words ''actions, inactions, or submissions'' with the words ''representations, actions, inactions, or submissions''.

b. In paragraph (a)(9)(ii), replace the words ''or, if such multiple'' with the words '', except that, if such multiple''.

§ 72.25 [Amended]

8. Section 72.25 is amended by, in paragraph (b), replace the words ''submission, action or inaction'' with the words ''representation, action, inaction, or submission'' and replace the words ''submission, action, or inaction'' with the words ''representation, action, inaction, or submission''.

PART 73—[AMENDED]

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

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

§ 73.31 [Amended]

2. Section 73.31 is amended by, in paragraph (c)(1)(v), replace the words ''actions, inactions, or submissions'' with the words ''representations, actions, inactions, or submissions''.

§ 73.33 [Amended]

3. Section 73.33 is amended by:

a. In paragraph (d)(4), replace the words ''action, representation, or failure to act'' with the words ''representation, action, inaction, or submission'' and replace the word ''an action'' with the words ''a representation, action, inaction, or submission''.

b. In paragraph (e), replace the word ''actions'' with the words ''representations, actions, inactions, or submissions''.

c. In paragraph (f), replace the words ''any submission to'' with the words ''any representation, action, inaction, or submission to'' and replace the words ''the recordation of transfers submitted by'' with the words ''any representation, action, inaction, or submission of''.

PART 74—[AMENDED]

1. The authority citation for Part 74 continues to read as follows:

Authority: 7601 and 7651 *et seq.*

§ 74.4 [Amended]

2. Section 74.4(c) is removed.

PART 78—APPEAL PROCEDURES

1. The authority citation for Part 78 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

§ 78.1 [Amended]

2. Section 78.1 is amended by:

a. In paragraph (b)(8)(ii), replace the words ''§ 97.256'' by the words ''§ 96.256''.

b. Add new paragraphs (b)(10), (b)(11), and (b)(12) to read as follows:

§ 78.1 Purpose and scope.

* * * * *

(b) * * *

(10) Under subparts AA through HH of part 97 of this chapter,

(i) The decision on the allocation of CAIR NO_X allowances under subpart EE of part 97 of this chapter.

(ii) The decision on the deduction of CAIR NO_X allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_X allowances based on the information as adjusted, under § 97.154 of this chapter;

(iii) The correction of an error in a CAIR NO_X Allowance Tracking System account under § 97.156 of this chapter;

(iv) The decision on the transfer of CAIR NO_X allowances under § 97.161 of this chapter;

(v) The finalization of control period emissions data, including retroactive adjustment based on audit;

(vi) The approval or disapproval of a petition under § 97.175 of this chapter.

(11) Under subparts AAA through HHH of part 97 of this chapter,

(i) The decision on the deduction of CAIR SO_2 allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR SO_2 allowances based on the information as adjusted, under § 97.254 of this chapter;

(ii) The correction of an error in a CAIR SO_2 Allowance Tracking System account under § 97.256 of this chapter;

(iii) The decision on the transfer of CAIR SO_2 allowances under § 97.261 of this chapter;

(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;

(v) The approval or disapproval of a petition under § 97.275 of this chapter.

(12) Under subparts AAAA through HHHH of part 97 of this chapter,

(i) The decision on the allocation of CAIR NO_X Ozone Season allowances under subpart EEEE of part 97 of this chapter.

(ii) The decision on the deduction of CAIR NO_X Ozone Season allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_X Ozone Season allowances based on the information as adjusted, under § 97.354 of this chapter;

(iii) The correction of an error in a CAIR NO_X Ozone Season Allowance Tracking System account under § 97.356 of this chapter;

(iv) The decision on the transfer of CAIR NO_X Ozone Season allowances under § 97.361;

(v) The finalization of control period emissions data, including retroactive adjustment based on audit;

(vi) The approval or disapproval of a petition under § 97.375 of this chapter.

* * * * *

§ 78.3 [Amended]

3. Section 78.3 is amended by:

a. In paragraph (b)(3)(i), replace the words ''under paragraph (a)(4), (5), or (6) of this section'' by the words ''under paragraph (a)(4), (5), (6), (7), (8), or (9) of this section'';

b. In paragraph (d)(3), replace the words ''account certificate of representation submitted by a CAIR designated representative'' by the words ''certificate of representation submitted by a CAIR designated representative'' and replace the words ''or subparts AAAA through IIII of part 96 of this chapter'', the words ''subparts AAAA through IIII of part 96 of this chapter, or under part 97 of this chapter'';

c. Add new paragraphs (a)(7), (a)(8), (a)(9), (d)(8), (d)(9), and (d)(10) to read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(7) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through HH of part 97 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR NO_X Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

(8) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through HHH of part 97 and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR SO_2 Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

(9) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAAA through HHHH of part 97 and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR Ozone Season NO_X Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

* * * * *

(d) * * *

(8) Any provision or requirement of subparts AA through HH of part 97 of this chapter, including the standard requirements under § 97.106 of this chapter and any emission monitoring or reporting requirements.

(9) Any provision or requirement of subparts AAA through HHH of part 97 of this chapter, including the standard requirements under § 97.206 of this chapter and any emission monitoring or reporting requirements.

(10) Any provision or requirement of subparts AAAA through HHHH of part 97 of this chapter, including the standard requirements under § 97.306 of this chapter and any emission monitoring or reporting requirements.

PART 96—NO_X BUDGET TRADING PROGRAM AND CAIR NO_X AND SO_2 TRADING PROGRAMS FOR STATE IMPLEMENTATION PLANS

1. The heading of part 96 is revised to read as set forth above.

2. The authority citation for part 96 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7601, and 7651, *et seq.*

§ 96.102 [Amended]

3. Section 96.102 is amended by:

a. In the definition of ''Alternate CAIR designated representative'', add at the end the words ''If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.''

b. In the definition of ''CAIR designated representative'', add at the end the words ''If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.''

c. In the definition of ''CAIR NO_X allowance'', replace the words ''by the permitting authority under'' with the words ''by the permitting authority or the Administrator under'', replace the words ''§ 96.188'' with the words ''§ 96.188, or under subpart EE of part 97 or § 97.188 of this chapter,'', and replace the words ''§ 51.123(o)(1) or (2) of this chapter'' with the words ''§ 51.123(o)(1) or (2) of this chapter or subpart EE of part 97 or § 97.188 of this chapter'';

d. In the definition of ''CAIR NO_X allowance deduction or deduct CAIR NO_X allowances'', add, after the words ''compliance account'', the words '', *e.g.*,'';

e. In the definition of ''CAIR NO_X Annual Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and § 52.35 of this chapter,'';

f. In the definition of ''CAIR NO_X Ozone Season Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and § 52.35 of this chapter,'';

g. In the definition of ''CAIR SO_2 Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and § 52.36 of this chapter,'';

h. In paragraph (2) of the definition of ''Cogeneration unit'', replace the words ''calendar year after which'' with the words ''calendar year after the calendar year in which'';

i. In the definition of ''Commence commercial operation'', replace the words ''on the date the unit commences'' with the words ''on the later of November 15, 1990 or the date the unit commences'' in paragraphs (1)(i), (1)(ii), and (2);

j. In the definition of ''Commence operation'', revise paragraphs (1)(i) and (1)(ii), remove paragraph (2), replace in paragraphs (3)(i) and (3)(ii) the words ''in paragraph (3)'' with the words ''in paragraph (2)'', replace in paragraph (3)(ii) the words ''in paragraph (1), (2), or (3)'' with the words ''in paragraph (1) or (2)'', and redesignate paragraph (3) as paragraph (2);

k. In the definition of ''Control period'', replace the words ''January 1 of a calendar year and'' with the words ''January 1 of a calendar year, except as provided in § 96.106(c)(2), and'';

l. In the definition of ''Oil-fired'', replace the words ''in a specified year.'' with the words ''in a specified year and not qualifying as coal-fired.''; and

m. Add new definitions of ''Hg Budget Trading Program'' and ''Solid waste incineration unit'' and revise to read as follows:

§ 96.102 Definitions.

* * * * *

Commence operation means:

(1) * * *

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, 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.

* * * * *

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, as a means of reduction national Hg emissions.

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste

incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

4. Section 96.103 is revised to read as follows:

§ 96.103 Measurements, abbreviations, and acroynyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BB through II 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

§ 96.104 [Amended]

5. Section 96.104 is revised to read as follows:

§ 96.104 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_X units, and any source that includes one or more such units shall be a CAIR NO_X source, subject to the requirements of this subpart and subparts BB through HH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X unit on the date on which it first serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_X units:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe 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.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.105 [Amended]

6. Section 96.105 is amended by:

a. In paragraph (a)(1), replace the words ''§ 96.106(c)(4) through (8)'' with the words ''§ 96.106(c)(4) through (7)'' and replace the words ''subparts EE through GG'' with the words ''subparts BB and EE through GG''; and

b. In paragraph (b)(3), replace the words ''shall retain at the source'' with the words ''shall retain, at the source''.

§ 96.106 [Amended]

7. Section 96.106 is amended by:

a. In paragraph (a)(1)(i), replace the words ''in § 96.121(a) and (b)'' with the words ''in § 96.121'';

b. In paragraph (c)(2), replace the words ''under paragraph (c)(1) of this section'' with ''under paragraph (c)(1) of this section for the control period'' and replace the words ''under § 96.170(b)(1), (2), or (5)'' with the words ''under § 96.170(b)(1), (2), or (5) and for each control period thereafter'';

c. In paragraph (c)(7), replace the words ''from a CAIR NO_X unit's compliance account'' with the words ''from a CAIR NO_X source's compliance account'' and replace the words ''CAIR permit of the source that includes the CAIR NO_X unit'' with the words ''CAIR permit of the source''; and

d. In paragraph (d), remove paragraph (2), remove the designation of paragraph (1), redesignate paragraph (i) as paragraph (1), and redesignate paragraph (ii) as paragraph (2).

§ 96.113 [Amended]

8. Section 96.113 is amended by, in paragraph (a)(4)(iv), replacing the words ''where a customer'' with the words ''where a utility or industrial customer''.

§ 96.142 [Amended]

9. Section 96.142 is amended by:

a. In paragraph (a)(2)(ii)(C), replace the words ''3,414 Btu/kWh'' with the words ''3,413 Btu/kWh'';

b. In paragraph (c)(1), replace the words ''2009 through 2013'' with the words ''2009 through 2014'' and replace the words ''in 2014'' with the words ''in 2015'';

c. In paragraph (c)(2), replace the words ''on or before July 1'' with the words ''on or before May 1''; and

d. In paragraph (c)(4)(ii), replace the words ''On or after July 1'' with the words ''On or after May 1''.

§ 96.143 [Amended]

10. Section 96.143 is amended by:

a. In paragraph (d)(3), replace the words '' 'Unit's allocation' is the number of CAIR NO_X allowances'' with the words '' 'Unit's allocation' is the amount of CAIR NO_X allowances';

b. In paragraph (d)(4), replace the words ''paragraph (d)(3) or (4)'' with the words ''paragraph (d)(2) or (3)''; and

c. In paragraph (d)(5), replace the words ''paragraph (d)(5)'' with the words ''paragraph (d)(4)''.

§ 96.153 [Amended]

11. Section 96.153 is amended by:

a. In paragraph (a), replace the words ''By December 1, 2006, the Administrator'' with the words ''The Administrator''; and

b. Revise paragraph (c) to read as follows:

§ 96.153 Recordation of CAIR NO_X allowance allocations.

* * * * *

(c) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with § 96.141(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

* * * * *

§ 96.154 [Amended]

12. Section 96.154 is amended by, in paragraph (c)(2)(ii), replace the words ''to any unit'' with the words ''to any entity''.

§ 96.170 [Amended]

13. Section 96.170 is amended by:

a. In paragraph (b)(5), replace the words ''paragraphs (b)(1), (2), and (4) of this section and solely for purposes of § 96.106(c)(2), for the owner'' with the words ''paragraphs (b)(1) and (2) of this section, for the owner''; and

b. Add a new paragraph (e) to read as follows:

§ 96.170 General Requirements.

* * * * *

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_X unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.171 [Amended]

14. Section 96.171 is amended by, in paragraph (c), replace the words ''§ 75.12, § 75.17, or subpart H of part 75'' with the words ''§ 75.12 or § 75.17''.

§ 96.173 [Amended]

15. Section 96.173 is amended by removing the words '', except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority''.

§ 96.174 [Amended]

16. Section 96.174 is amended by:

a. In paragraph (d)(1)(i), replace the words ''2008; or'' with the words ''2008;'';

b. In paragraph (d)(1)(ii), replace the words ''2008.'' with the words ''2008;'';

c. Add new paragraphs (d)(1)(iii) and (iv); and

d. In paragraph (d)(3), replace the words ''or CAIR SO_2 Trading Program,'' with the words '', CAIR SO_2 Trading Program, or Hg Budget Trading Program,'' and replace the words ''subparts F through H'' with the words ''subparts F through I'' to read as follows:

§ 96.174 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the calendar quarter corresponding to the date specified in § 96.184(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X opt-in unit under subpart II of this part, the calendar quarter corresponding to the date on which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program as provided in § 96.184(g) of this chapter.

* * * * *

§ 96.184 [Amended]

17. Section 96.184 is amended by:

a. In paragraph (c)(2), replace the words ''for the control period under paragraph (b)(1)(ii) of this section and for the control periods under paragraph (b)(2) of this section'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section'';

b. In paragraph (d)(2), replace the words ''for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section''; and

c. In paragraph (d)(3), replace the words ''for such control period'' with words ''for such control periods''.

§ 96.185 [Amended]

18. Section 96.185 is amended by:

a. In paragraph (b), replacing the words ''under subpart FF or GG'' with the words ''under subpart FF, GG, or II''; and

b. Adding a new paragraph (c) to read as follows:

§ 96.185 CAIR opt-in permit contents.

* * * * *

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR opt-in unit is located.

§ 96.186 [Amended]

19. Section 96.186 is amended by, in paragraph (b)(2), replace the words ''equal in number to'' with the words ''equal in amount to''.

§ 96.187 [Amended]

20. Section 96.187 is amended by:

a. In paragraph (b)(2)(i), replace the words ''equal in number to'' with the words ''equal in amount to''; and

b. In paragraphs (b)(3)(ii) and (b)(3)(ii)(A), replace the words ''number of CAIR NO_X allowances'' with the words ''amount of CAIR NO_X allowances''.

§ 96.188 [Amended]

21. Section 96.188 is amended by:

a. Revise the heading of the section; and

b. In paragraph (d)(2), replace the words ''CAIR opt-in unit'' with the words ''CAIR NO_X opt-in unit''.

§ 96.188 CAIR NO_X allowance allocations to CAIR NO_X opt-in units.

* * * * *

§ 96.202 [Amended]

22. Section 96.202 is amended by:

a. In the definition of ''Alternative CAIR designated representative'', add at the end the words ''If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate designated representative under the Hg Budget Trading Program.''

b. In the definition of ''CAIR designated representative'', add at the end the words ''If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.''

c. In the definition of ''CAIR NO_X Annual Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and § 52.35 of this chapter,'';

d. In the definition of ''CAIR NO_X Ozone Season Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97

of this chapter and § 52.35 of this chapter,'';

e. In the definition of ''CAIR SO_2 allowance'', replace in the introductory text the words ''under § 96.288,'' with the words ''under § 96.288 or § 97.288 of this chapter,'', designate the last sentence of the definition as paragraph (4), and, in paragraph (4), replace the words ''Program or under the provisions of'' with the words ''Program, under provisions of'' and replace the words ''is approved'' with the words ''are approved'' and replace the words ''of this chapter'' with the words ''of this chapter, or under § 97.288 of this chapter'';

f. In the definition of ''CAIR SO_2 allowance deduction or deduct CAIR SO_2 allowances'', add, after the words ''compliance account'', the words '',*e.g.*,'';

g. In the definition of ''CAIR SO_2 Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and § 52.36 of this chapter,'';

h. In paragraph (2) of the definition of ''Cogeneration unit'', replace the words ''calendar year after which'' with the words ''calendar year after the calendar year in which'';

i. In the definition of ''Commence commercial operation'', replace the words ''on the date the unit commences'' with the words ''on the later of November 15, 1990 or the date the unit commences'' in paragraphs (1)(i), (1)(ii), and (2) and remove the words ''or § 96.287(b)(3)'' in paragraph (3);

j. In the definition of ''Commence operation'', revise paragraphs (1)(i), and (1)(ii), remove paragraph (2), remove the words ''or § 96.287(b)(3)'' in paragraph (3), replace the words ''in paragraph (3)'' with the words ''in paragraph (2)'' in paragraphs (3)(i) and (3)(ii), replace the words ''in paragraph (1), (2), or (3)'' with the words ''in paragraph (1) or (2)'', and redesignate paragraph (3) as paragraph (2);

k. In the definition of ''Control period'', replace the words ''January 1 of a calendar year and'' with the words ''January 1 of a calendar year, except as provided in § 96.206(c)(2), and'';

l. In the definition of ''Useful thermal energy'', replace in paragraph (2) the word ''heat'' with the word ''heating''; and

m. Add new definitions of ''Hg Budget Trading Program'' and ''Solid waste incineration unit'' and revise to read as follows:

§ 96.202 Definitions.

* * * * *

Commence operation means:

(1) * * *

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source (*e.g.*, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, 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.

* * * * *

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, as a means of reduction national Hg emissions.

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

23. Section 96.203 is revised to read as follows:

§ 96.203 Measurements, abbreviations, and acroynyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBB through III 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

24. Section 96.204 is revised to read as follows:

§ 96.204 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR SO_2 units, and any source that includes one or more such units shall be a CAIR SO_2 source, subject to the requirements of this subpart and subparts BBB through HHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR SO_2 unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR SO_2 unit on the date on which it first serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR SO_2 units:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe 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.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for

1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.205 [Amended]

25. Section 96.205 is amended by:

a. In paragraph (a)(1), replace the words ''§ 96.206(c)(4) through (8)'' with the words ''§ 96.206(c)(4) through (7)'' and replace the words ''subparts FFF and GGG'' with the words ''subparts BBB, FFF, and GGG:''; and

b. In paragraph (b)(2), replace the words ''shall retain at the source'' with the words ''shall retain, at the source''.

§ 96.206 [Amended]

26. Section 96.206 is amended by:

a. In paragraph (a)(1)(i), replace the words ''in § 96.221(a) and (b)'' with the words ''in § 96.221'';

b. In paragraph (c)(2), replace the words ''under paragraph (c)(1) of this section'' with ''under paragraph (c)(1) of this section for the control period'' and replace the words ''under § 96.270(b)(1), (2), or (5)'' with the words ''under § 96.270(b)(1), (2), or (5) and for each control period thereafter'';

c. In paragraph (c)(7), replace the words ''from a CAIR SO_2 unit's compliance account'' with the words ''from a CAIR SO_2 source's compliance account'' and replace the words ''CAIR permit of the source that includes the CAIR SO_2 unit'' with the words ''CAIR permit of the source''; and

d. In paragraph (d), remove paragraph (2), remove the designation of paragraph (1), redesignate paragraph (i) as paragraph (1), and redesignate paragraph (ii) as paragraph (2).

§ 96.213 [Amended]

27. Section 96.213 is amended by, in paragraph (a)(4)(iv), replacing the words ''where a customer'' with the words ''where a utility or industrial customer''.

§ 96.220 [Amended]

28. Section 96.220 is amended by, in paragraph (b), replacing the words ''CAIR SO_2 units at the source'' with the words ''CAIR SO_2 units at the source covered by the CAIR permit''.

§ 96.254 [Amended]

29. Section 96.254 is amended by:

a. In paragraph (a)(3), replace the words ''deduction for excess emissions'' with the words ''deductions for excess emissions''; and

b. In paragraphs (c)(2)(ii), (c)(2)(iv), and (c)(2)(vi), replace the words ''to any unit'' with the words ''to any entity''.

c. In paragraph (d)(1), replace the words ''3 times the number of tons of the source's excess emissions.'' with the words ''the sum of the following amounts:'' and add paragraphs (d)(1)(i) and (d)(1)(ii) to read as follows:

§ 96.254 Compliance with CAIR SO_2 emissions limitation.

* * * * *

(d) * * *

(1) * * *

(i) The number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR SO_2 allowances required to be deducted under paragraph (b)(1)(ii) of this section; and

(ii) Two times:

(A) The number of tons of the source's excess emissions, if the source is not subject to an Acid Rain emissions limitation; or

(B) The number of tons of the source's excess emissions minus the amount of the CAIR SO_2 allowances required to be deducted under paragraph (b)(1)(ii) of this section, if the source is subject to an Acid Rain emissions limitation.

* * * * *

§ 96.261 [Amended]

30. Section 96.261 is amended by:

a. In paragraph (a)(1), replace the words ''§ 96.260; and'' with the words ''§ 96.260;'';

b. In paragraph (a)(2), replace the words ''transfer.'' with the words ''transfer; and''; and

c. Add a new paragraph (a)(3) to read as follows:

§ 96.261 EPA recordation.

(a) * * *

(3) The transfer is in accordance with the limitation on transfer under § 74.42 of this chapter and § 74.47(c) of this chapter, as applicable.

* * * * *

§ 96.270 [Amended]

31. Section 96.270 is amended by:

a. In paragraph (b)(5), replace the words ''paragraphs (b)(1) and (2) of this section and solely for purposes of § 96.206(c)(2), for the owner'' with the words ''paragraphs (b)(1) and (2) of this section, for the owner''; and

b. Add a new paragraph (e) to read as follows:

§ 96.270 General Requirements.

* * * * *

(e) *Long-term cold storage.* The owner or operator of a CAIR SO_2 unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.271 [Amended]

32. Section 96.271 is amended by removing and reserving paragraph (c).

§ 96.273 [Amended]

33. Section 96.273 is amended by removing the words '', except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority''.

§ 96.274 [Amended]

34. Section 96.274 is amended by:

a. In paragraph (d)(1)(i), replace the words ''2009; or'' with the words ''2009;'';

b. In paragraph (d)(1)(ii), replace the words ''2009.'' with the words ''2009;'';

c. Add new paragraphs (d)(1)(iii) and (iv); and

d. In paragraph (d)(3), replace the words ''or CAIR NO_X Ozone Season Trading Program,'' with the words '', CAIR NO_X Ozone Season Trading Program, or Hg Budget Trading Program,'' and replace the words ''subparts F through H'' with the words ''subparts F through I''.

§ 96.274 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the calendar quarter corresponding to the date specified in § 96.284(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a

CAIR SO_2 opt-in unit under subpart III of this part, the calendar quarter corresponding to the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program as provided in § 96.284(g).

* * * * *

§ 96.283 [Amended]

35. Section 96.283 is amended by:

a. In paragraph (a)(2)(iii), replace the words ''CAIR opt-in unit'' with the words ''CAIR SO_2 opt-in unit''; and

b. In paragraph (b)(1), replace the words ''or permitting authority''s'' with the words ''or the permitting authority's''.

§ 96.284 [Amended]

36. Section 96.284 is amended by:

a. In paragraph (c)(2), replace the words ''for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section'';

b. In paragraph (d)(2), replace the words ''for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section''; and

c. In paragraph (d)(3), replace the words ''for such control period'' with words ''for such control periods''.

§ 96.285 [Amended]

37. Section 96.285 is amended by:

a. In paragraph (b), replacing the words ''under subpart FFF or GGG'' with the words ''under subpart FFF, GGG, or III''; and

b. Adding a new paragraph (c) to read as follows:

§ 96.285 CAIR opt-in permit contents.

* * * * *

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR opt-in unit is located.

§ 96.286 [Amended]

38. Section 96.286 is amended by, in paragraph (b)(2), replacing the words ''equal in number to'' with the words ''equal in amount to''.

§ 96.287 [Amended]

39. Section 96.287 is amended by:

a. In paragraph (b)(2)(i), replace the words ''equal in number to'' with the words ''equal in amount to''; and

b. Remove paragraph (b)(3).

§ 96.288 [Amended]

40. Section 96.288 is amended by:

a. Revise the heading of the section; and

b. In paragraph (d)(2), replace the words ''CAIR opt-in unit'' with the words ''CAIR SO_2 opt-in unit''.

§ 96.288 CAIR SO_2 allowance allocations to CAIR SO_2 opt-in units.

* * * * *

§ 96.302 [Amended]

41. Section 96.302 is amended by:

a. In the definition of ''Allocate or allocation'', replace with words ''under subpart EEEE'' with the words ''under subpart EEEE of this part or § 51.123(aa)(2)(iii), (bb)(2)(iii) or (iv), or (dd)(3) or (4) of this chapter'';

b. In the definition of ''Alternate CAIR NO_X designated representative'', add at the end the words ''If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.''

c. In the definition of ''CAIR NO_X designated representative'', add at the end the words ''If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.''

d. In the definition of ''CAIR NO_X Annual Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and § 52.35 of this chapter,'';

e. In the definition of ''CAIR NO_X Ozone Season allowance'', replace the words ''by the permitting authority under'' with the words ''by the permitting authority or the Administrator under'', replace the words ''§ 51.123(aa)(2)(iii)(A)'' with the words ''§ 51.123(aa)(2)(iii)'', replace the words ''or (dd)(3) or (4) of this chapter'' with the words ''or (dd)(3) or (4) of this chapter, or under subpart EEEE of part 97 or § 97.388 of this chapter'', replace the words ''Budget Trading Program'' with the words ''Budget Trading Program in accordance with § 51.121(p) of this chapter'', and replace the words ''or (dd) of this chapter'' with the words ''or (dd) of this chapter or subpart EEEE of part 97 or § 97.388 of this chapter'';

f. In the definition of ''CAIR NO_X Ozone Season allowance deduction or deduct CAIR NO_X Ozone Season allowances'', add, after the words ''compliance account'', the words '',e.g.,'';

g. In the definition of ''CAIR NO_X Ozone Season Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and § 52.35 of this chapter,'';

h. In the definition of ''CAIR NO_X SO_2 Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and § 52.36 of this chapter,'';

i. In paragraph (2) of the definition of ''Cogeneration unit'', replace the words ''calendar year after which'' with the words ''calendar year after the calendar year in which'';

j. In the definition of ''Commence commercial operation'', in paragraphs (1)(i), (1)(ii), and (2), replace the words ''on the date the unit commences'' with the words ''on the later of November 15, 1990 or the date the unit commences'';

k. In the definition of ''Commence operation'', revise paragraphs (1)(i), (1)(ii) and (2);

l. In the definition of ''Control period'', replace the words ''January 1 of a calendar year and'' with the words ''January 1 of a calendar year, except as provided in § 96.306(c)(2), and'';

m. In the definition of ''Oil-fired'', replace the words ''in a specified year.'' with the words ''in a specified year and not qualifying as coal-fired.'';

n. In the definition of ''Useful thermal energy'', replace in paragraph (2) the word ''heat'' with the word ''heating''; and

o. Add new definitions of ''Hg Budget Trading Program'' and ''Solid waste incineration unit'' and revise to read as follows:

§ 96.302 Definitions.

* * * * *

Commence operation means:

(1) * * *

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1),

(2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is a CAIR NO_X Ozone Season unit under § 96.304(d), but not on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (1) of this definition, and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 96.304(d).

(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),(2), or (3) of this definition as appropriate.

* * * * *

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, as a means of reduction national Hg emissions.

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

42. Section 96.303 is revised to read as follows:

§ 96.303 Measurements, abbreviations, and acroynyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBBB through IIII 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

§ 96.304 [Amended]

43. Section 96.304 is revised to read as follows:

§ 96.304 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_X Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_X Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X Ozone Season unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X Ozone Season unit on the date on which it first serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_X Ozone Season units:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe 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.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.305 [Amended]

44. Section 96.305 is amended by:

a. In paragraph (a)(1), replace the words ''§ 96.306(c)(4) through (8)'' with the words ''§ 96.306(c)(4) through (7)'' and replace the words ''subparts EEEE through GGGG'' with the words ''subparts BBBB and EEEE through GGGG''; and

b. In paragraph (b)(3), replace the words ''shall retain at the source'' with the words ''shall retain, at the source''.

§ 96.306 [Amended]

45. Section 96.306 is amended by:

a. In paragraph (a)(1)(i), replace the words ''in § 96.321(a) and (b)'' with the words ''in § 96.321'';

b. In paragraph (c)(2), replace the words ''under paragraph (c)(1) of this section'' with ''under paragraph (c)(1) of this section for the control period'' and replace the words ''under § 96.370(b)(1), (2), (3), or (7)'' with the words ''under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter'';

c. In paragraph (c)(7), replace the words ''from a CAIR NO_X Ozone Season unit's compliance account'' with the words ''from a CAIR NO_X Ozone Season source's compliance account'' and replace the words ''CAIR permit of the source that includes the CAIR NO_X Ozone Season unit'' with the words ''CAIR permit of the source''; and

d. In paragraph (d), remove paragraph (2), remove the designation of paragraph (1), redesignate paragraph (i) as paragraph (1), and redesignate paragraph (ii) as paragraph (2).

§ 96.313 [Amended]

46. Section 96.313 is amended by, in paragraph (a)(4)(iv), replacing the words ''where a customer'' with the words ''where a utility or industrial customer''.

§ 96.342 [Amended]

47. Section 96.342 is amended by:

a. In paragraph (a)(2)(i), replace the words ''during a calendar year'' by the words ''during a control period in a calendar year'';

b. In paragraph (a)(2)(ii)(C), replace the words ''3,414 Btu/kWh'' with the words ''3,413 Btu/kWh'';

c. In paragraph (c)(1), replace the words ''2009 through 2013'' with the words ''2009 through 2014'' and replace the words ''in 2014'' with the words ''in 2015'';

d. In paragraph (c)(2), replace the words ''on or before April 1'' with the words ''on or before February 1''; and

e. In paragraph (c)(4)(ii), replace the words ''On or after April 1'' with the words ''On or after February 1''.

§ 96.353 [Amended]

48. Section 96.353 is amended by:

a. In paragraph (a), replace the words ''By December 1, 2006, the Administrator'' with the words ''The Administrator''; and

b. Revise paragraph (c) to read as follows:

§ 96.353 Recordation of CAIR NO_X Ozone Season allowance allocations.

* * * * *

(c) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with § 96.341(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

* * * * *

§ 96.354 [Amended]

49. Section 96.354 is amended by, in paragraph (c)(2)(ii), replace the words ''to any unit'' with the words ''to any entity'.

§ 96.370 [Amended]

50. Section 96.370 is amended by:

a. In paragraph (b)(7), replace the words ''paragraphs (b)(1), (2), and (3) of this section and solely for purposes of § 96.206(c)(2), for the owner'' with the words ''paragraphs (b)(1), (2), and (3) of this section, for the owner'' and replace the words ''CAIR NO_X Ozone Season opt-in unit'' with the words ''CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part''; and

b. Add a new paragraph (e) to read as follows:

§ 96.370 General Requirements.

* * * * *

(e) Long-term cold storage. The owner or operator of a CAIR NO_X Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.371 [Amended]

51. Section 96.371 is amended by, in paragraph (c), replace thee words ''§ 75.12, § 75.17, or subpart H of part 75'' with the words ''§ 75.12 or § 75.17''.

§ 96.373 [Amended]

52. Section 96.373 is amended by removing the words '', except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority''.

§ 96.374 [Amended]

53. Section 96.374 is amended by:

a. In paragraph (d)(1)(i), replace the words ''2008; or'' with the words ''2008.'';

b. In paragraph (d)(2)(i)(A), replace the words ''2008;'' with the words ''2008.'';

c. Add new paragraphs (d)(1)(iii) and (iv) and (d)(2)(iii) and (iv); and

d. In paragraph (d)(3), replace the words ''or CAIR SO_2 Trading Program,'' with the words '', CAIR SO_2 Trading Program, or Hg Budget Trading Program,'' and replace the words ''subparts F through H'' with the words ''subparts F through I'' to read as follows:

§ 96.374 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 96.384(g).

(2) * * *

(iii) Notwithstanding paragraphs (d)(2)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b).

(iv) Notwithstanding paragraphs (d)(2)(i) and (ii) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 96.384(g).

* * * * *

§ 96.384 [Amended]

54. Section 96.384 is amended by:

a. In paragraph (c)(2), replace the words ''for the control period under paragraph (b)(1)(ii) of this section and for the control periods under paragraph (b)(2) of this section'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section'';

b. In paragraph (d)(2), replace the words ''for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (2) of this section''; and

c. In paragraph (d)(3), replace the words ''for such control period ''with words ''for such control periods'.

§ 96.385 [Amended]

55. Section 96.385 is amended by:

a. In paragraph (b), replacing the words ''under subpart FFFF or GGGG'' with the words ''under subpart FFFF, GGGG, or IIII''; and

b. Adding a new paragraph (c) to read as follows:

§ 96.385 CAIR opt-in permit contents.

* * * * *

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR opt-in unit is located.

§ 96.386 [Amended]

56. Section 96.386 is amended by, in paragraph (b)(2), replacing the words ''equal in number to'' with the words ''equal in amount to'.

§ 96.387 [Amended]

57. Section 96.387 is amended by:

a. In paragraph (b)(2)(i), replace the words ''equal in number to'' with the words ''equal in amount to''; and

b. In paragraphs (b)(3)(ii) and (b)(3)(ii)(A), replace the words ''number of CAIR NO_X Ozone Season allowances'' with the words ''amount of CAIR NO_X Ozone Season allowances''.

§ 96.388 [Amended]

58. Section 96.388 is amended by:

a. Revise the heading of the section; and

b. In paragraph (d)(2), replace the words ''CAIR opt-in unit'' with the words ''CAIR NO_X Ozone Season opt-in unit''.

§ 96.388 CAIR NO_X Ozone Season allowance allocations to CAIR NO_X Ozone Season opt-in units.

* * * * *

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM AND CAIR NO_X AND SO_2 TRADING PROGRAMS

1. The heading of part 97 is revised to read as set forth above.

2. The authority citation for Part 97 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

3. Part 97 is amended by adding subparts AA through HH, to read as follows:

Subpart AA—CAIR NO_X Annual Trading Program General Provisions

Subpart BB—CAIR Designated Representative for CAIR NO_X Sources

Subpart CC—Permits

Subpart DD—[Reserved]

Subpart EE—CAIR NO_X Allowance Allocations

Subpart FF—CAIR NO_X Allowance Tracking System

Subpart GG—CAIR NO_X Allowance Transfers

Subpart HH—Monitoring and Reporting

Subpart II—CAIR NO_X Opt-in Units

Subpart AA—CAIR NO_X Annual Trading Program General Provisions

§ 97.101 Purpose.

This subpart and subparts BB through II set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) NO_X Annual Trading Program, under section 110 of the Clean Air Act and § 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

§ 97.102 Definitions.

The terms used in this subpart and subparts BB through II shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_X Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Actual weighted average NO_X emission rate means, for a NO_X averaging plan under § 76.11 of this chapter and for a year:

(1) The sum of the products of the actual annual average NO_X emission rate and actual annual heat input (as determined in accordance with part 75 of this chapter) for all units in the NO_X averaging plan for the year; divided by

(2) The sum of the actual annual heat input (as determined in accordance with part 75 of this chapter) for all units in the NO_X averaging plan for the year.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR NO_X allowances issued

under subpart EE, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit or a new unit set-aside and, with regard to CAIR NO_X allowances issued under § 97.188, the determination by the permitting authority of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit.

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 CAIR NO_X allowance transfer must be submitted for recordation in a CAIR NO_X source's compliance account in order to be used to meet the source's CAIR NO_X emissions limitation for such control period in accordance with § 97.154.

Alternate CAIR designated representative means, for a CAIR NO_X source and each CAIR NO_X 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 subparts BB and II of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_X Annual Trading Program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BB and II of this part, to transfer and otherwise dispose of CAIR NO_X allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_X source and each CAIR NO_X 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 subparts BB and II of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Annual Trading Program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the designated representative under the Hg Budget Trading Program.

CAIR NO_X allowance means a limited authorization issued by the permitting authority or the Administrator under subpart EE of this part or under § 97.188, or under provisions of a State implementation plan that are approved under § 51.123(o) (1) or (2) of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Program. An authorization to emit nitrogen oxides that is not issued under subpart EE of this part, § 97.188, or provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) of this chapter shall not be a CAIR NO_X allowance.

CAIR NO_X allowance deduction or *deduct CAIR NO_X allowances* means the permanent withdrawal of CAIR NO_X allowances by the Administrator from a compliance account, *e.g.*, in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X units at a CAIR NO_X source for a control period, determined in accordance with subpart HH of this part, or to account for excess emissions.

CAIR NO_X Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_X allowances under the CAIR NO_X Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_X Allowance Tracking System account means an account in the CAIR NO_X Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X allowances.

CAIR NO_X allowances held or *hold CAIR NO_X allowances* means the CAIR NO_X allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF, GG, and II of this part, in a CAIR NO_X Allowance Tracking System account.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 51.123(o) (1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X emissions limitation means, for a CAIR NO_X source, the tonnage equivalent of the CAIR NO_X allowances available for deduction for the source under § 97.154 (a) and (b) for a control period.

CAIR NO_X Ozone Season source means a source that includes one or more CAIR NO_X Ozone Season units.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and § 52.35 of this chapter or

administered by the Administrator under provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X Ozone Season unit means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under § 97.304 and a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_X source means a source that includes one or more CAIR NO_X units.

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 97.104 and, except for purposes of § 97.105 and subpart EE of this part, a CAIR NO_X opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CC of this part, including any permit revisions, specifying the CAIR NO_X Annual Trading Program requirements applicable to a CAIR NO_X source, to each CAIR NO_X unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and § 52.36 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 97.204 and a CAIR SO_2 opt-in unit under subpart III of this part.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

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.

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:

(1) Except for purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(2) For purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-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 the calendar year in 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 § 97.105.

(i) For a unit that is a CAIR NO_X unit under § 97.104 on the later of November 15, 1990 or 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 CAIR NO_X unit under § 97.104 on the later of November 15, 1990 or 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), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.105, for a unit that is not a CAIR NO_X unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X unit under § 97.104.

(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), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 97.184(h) or § 97.187(b)(3), for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of commercial operation shall be the date

on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 97.184(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 (3) 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), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

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 § 97.105.

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source (*e.g.*, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, 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 § 97.184(h) or § 97.187(b)(3), for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 97.184(b)(1)(i).

(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 CAIR NO_X Allowance Tracking System account, established by the Administrator for a CAIR NO_X source under subpart FF or II of this part, in which any CAIR NO_X allowance allocations for the CAIR NO_X units at the source are initially recorded and in which are held any CAIR NO_X allowances available for use for a control period in order to meet the source's CAIR NO_X emissions limitation in accordance with § 97.154.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides 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 continuous emission monitoring systems required under subpart HH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2; and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) 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, except as provided in § 97.106(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_X units at a CAIR NO_X source during a control period that exceeds the CAIR NO_X emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_X Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross 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 CAIR designated representative and determined by the Administrator in accordance with subpart HH of this part 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 Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, as a means of reduction national Hg emissions.

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.

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 subpart HH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_X emissions limitation means, with regard to a unit, the lowest NO_X emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, 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.

Oil-fired means, for purposes of subpart EE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_X unit or a CAIR NO_X source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_X source or a CAIR NO_X unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_X unit at the source or the CAIR NO_X unit;

(ii) Any holder of a leasehold interest in a CAIR NO_X unit at the source or the CAIR NO_X unit; or

(iii) Any purchaser of power from a CAIR NO_X unit at the source or the CAIR NO_X 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 CAIR NO_X unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_X allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_X Annual Trading Program in accordance with subpart CC of this part 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 CAIR NO_X allowances, the movement of CAIR NO_X allowances by the Administrator into or between CAIR NO_X Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

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.

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.

Serial number means, for a CAIR NO_X allowance, the unique identification number assigned to each CAIR NO_X allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

State means one of the States or the District of Columbia that is subject to the CAIR NO_X Annual Trading Program pursuant to § 52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any ''submission'' 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 Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, 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, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

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 heating 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.

§ 97.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BB through II 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

§ 97.104 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_X units, and any source that includes one or more such units shall be a CAIR NO_X source, subject to the requirements of this subpart and subparts BB through HH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X unit on the date on which it first serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_X units:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-

up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe 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.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_X Annual Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit 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) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division, U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_X Annual Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

§ 97.105 Retired unit exemption.

(a)(1) Any CAIR NO_X unit that is permanently retired and is not a CAIR NO_X opt-in unit under subpart II of this part shall be exempt from the CAIR NO_X Annual Trading Program, except for the provisions of this section, § 97.102, § 97.103, § 97.104, § 97.106(c)(4) through (7), § 97.107, and subparts BB and EE through GG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_X unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR 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 subpart CC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.*

(1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The Administrator will allocate CAIR NO_X allowances under subpart EE of this part 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 CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_X Annual 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 CAIR designated representative of the source submits a complete CAIR permit application under § 97.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 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 CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HH of this part, 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.

§ 97.106 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_X source required to have a title V operating permit and each CAIR NO_X unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.122 in accordance with the deadlines specified in § 97.121; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X source required to have a title V operating permit and each CAIR NO_X unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided under subpart II of this part, the owners and operators of a CAIR NO_X source that is not otherwise required to have a title V operating permit and each CAIR NO_X unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC of this part for such CAIR NO_X source and such CAIR NO_X unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X source and each CAIR NO_X unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HH of this part shall be used to determine compliance by each CAIR NO_X source with the CAIR NO_X emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X source and each CAIR NO_X unit at the source shall hold, in the source's compliance account, CAIR NO_X allowances available for compliance deductions for the control period under § 97.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X units at the source, as determined in accordance with subpart HH of this part.

(2) A CAIR NO_X unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 97.170(b)(1), (2), or (5) and for each control period thereafter.

(3) A CAIR NO_X 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 CAIR NO_X allowance was allocated.

(4) CAIR NO_X allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Allowance Tracking System accounts in accordance with subpart EE of this part.

(5) A CAIR NO_X allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Annual Trading Program. No provision of the CAIR NO_X Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.105 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR NO_X allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from a CAIR NO_X source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR NO_X source emits nitrogen oxides during any control period in excess of the CAIR NO_X emissions limitation, then:

(1) The owners and operators of the source and each CAIR NO_X unit at the source shall surrender the CAIR NO_X allowances required for deduction under § 97.154(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

(2) Each ton 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.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR NO_X source and each CAIR NO_X 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 § 97.113 for the CAIR designated representative for the source and each CAIR NO_X 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 § 97.113 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HH of this part, provided that to the extent that subpart HH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Annual Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Annual Trading Program.

(2) The CAIR designated representative of a CAIR NO_X source and each CAIR NO_X unit at the source shall submit the reports required under the CAIR NO_X Annual Trading Program, including those under subpart HH of this part.

(f) *Liability.* (1) Each CAIR NO_X source and each CAIR NO_X unit shall

meet the requirements of the CAIR NO_X Annual Trading Program.

(2) Any provision of the CAIR NO_X Annual Trading Program that applies to a CAIR NO_X source or the CAIR designated representative of a CAIR NO_X source shall also apply to the owners and operators of such source and of the CAIR NO_X units at the source.

(3) Any provision of the CAIR NO_X Annual Trading Program that applies to a CAIR NO_X unit or the CAIR designated representative of a CAIR NO_X unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO_X Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.105 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X source or CAIR NO_X unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Annual Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Annual Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X Annual Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.108 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_X Annual Trading Program are set forth in part 78 of this chapter.

Subpart BB—CAIR designated representative for CAIR NO_X sources

§ 97.110 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.111, each CAIR NO_X source, including all CAIR NO_X units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_X Annual Trading Program concerning the source or any CAIR NO_X unit at the source.

(b) The CAIR designated representative of the CAIR NO_X source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X units at the source and shall act in accordance with the certification statement in § 97.113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.113, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X source represented and each CAIR NO_X unit at the source in all matters pertaining to the CAIR NO_X Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X Allowance Tracking System account will be established for a CAIR NO_X unit at a source, until the Administrator has received a complete certificate of representation under § 97.113 for a CAIR designated representative of the source and the CAIR NO_X units at the source.

(e)(1) Each submission under the CAIR NO_X Annual Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_X source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X source or a CAIR NO_X unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.111 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.113 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.102, 97.110(a) and (d), 97.112, 97.113, and 97.151 and § 97.182, whenever the term ''CAIR designated representative'' is used in subparts AA through II of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 97.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X source and the CAIR NO_X units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by

the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X source and the CAIR NO_X units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a CAIR NO_X source or a CAIR NO_X unit is not included in the list of owners and operators in the certificate of representation under § 97.113, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions 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 CAIR NO_X source or a CAIR NO_X unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.113 amending the list of owners and operators to include the change.

§ 97.113 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_X source, and each CAIR NO_X 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 CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_X source and of each CAIR NO_X unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) ''I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Annual Trading Program on behalf of the owners and operators of the source and of each CAIR NO_X 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 CAIR NO_X 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 CAIR NO_X unit, or where a customer purchases power from a CAIR NO_X 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 ''CAIR designated representative'' or ''alternate CAIR designated representative'', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X unit at the source; and CAIR NO_X allowances and proceeds of transactions involving CAIR NO_X 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 CAIR NO_X allowances by contract, CAIR NO_X allowances and proceeds of transactions involving CAIR NO_X allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.113 is received by the Administrator.

(b) Except as provided in § 97.112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Annual Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

Subpart CC—Permits

§ 97.120 General CAIR Annual Trading Program permit requirements.

(a) For each CAIR NO_X source required to have a title V operating permit or required, under subpart II of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart II of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_X source and the CAIR NO_X units at the source covered by the CAIR permit, all applicable CAIR NO_X Annual Trading Program, CAIR NO_X Ozone Season Trading Program, and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.121 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR

NO_X source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.122 for the source covering each CAIR NO_X unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_X unit commences operation.

(b) *Duty to Reapply.* For a CAIR NO_X source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.122 for the source covering each CAIR NO_X unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 97.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_X source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_X source;

(b) Identification of each CAIR NO_X unit at the CAIR NO_X source; and

(c) The standard requirements under § 97.106.

§ 97.123 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.102 and, upon recordation by the Administrator under subpart FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from the compliance account of the CAIR NO_X source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X source's title V operating permit or other federally enforceable permit as applicable.

§ 97.124 CAIR permit revisions.

Except as provided in § 97.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DD—[Reserved]

Subpart EE—CAIR NO_X Allowance Allocations

§ 97.140 State trading budgets.

The State trading budgets for annual allocations of CAIR NO_X allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State Trading Budget for 2009–2014 (tons)	State Trading Budget for 2015 and thereafter (tons)
Alabama	69,020	57,517
Delaware	4,166	3,472
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New Jersey	12,670	10,558
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966
Total	1,521,707	1,268,091

§ 97.141 Timing requirements for CAIR NO_X allowance allocations.

(a) The Administrator will determine by order the CAIR NO_X allowance allocations, in accordance with § 97.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_X allowance allocations, in accordance with § 97.142(a) and (b), for the control period in the fourth year after the year of the applicable deadline for the determination under this paragraph.

(c) By July 31, 2009 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_X allowance allocations, in accordance

with § 97.142(a),(c), and (d), for the control period in the year of the applicable deadline for the determination under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR NO_X allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.142. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.142.

§ 97.142 CAIR NO_X allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_X allowance allocations under paragraph (b) of this section for each CAIR NO_X unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 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 follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(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, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_X 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 determined based on the best available data reported to the Administrator for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(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, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, 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.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator.

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and will give greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR NO_X units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the State trading budget for such State under § 97.140 (except as provided in paragraphs (d) and (e) of this section).

(2) The Administrator will allocate CAIR NO_X allowances to each CAIR NO_X unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_X allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_X unit to the total amount of baseline heat input of all such CAIR NO_X units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the Administrator will allocate CAIR NO_X allowances to CAIR NO_X units in a 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 Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget for the State under § 97.140.

(2) The CAIR designated representative of such a CAIR NO_X unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated CAIR NO_X allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X allowances under paragraph (b) of this section. The CAIR NO_X allowance allocation request must be submitted on or before May 1 of the first control period for which the CAIR NO_X allowances are requested and after the date on which the CAIR NO_X unit commences commercial operation.

(3) In a CAIR NO_X allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_X allowances in an amount not exceeding the CAIR NO_X unit's total tons of NO_X emissions during the calendar year immediately before such control period.

(4) The Administrator will review each CAIR NO_X allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_X

allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Administrator will determine the sum of the CAIR NO_X 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 CAIR NO_X allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_X unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each CAIR NO_X unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_X allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X allowances (if any) allocated for the control period to the CAIR NO_X 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 CAIR NO_X allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR NO_X unit that was allocated CAIR NO_X allowances under paragraph (b) of this section an amount of CAIR NO_X allowances equal to the total amount of such remaining unallocated CAIR NO_X allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget for such State under § 97.140, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR NO_X allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a CAIR NO_X unit under § 97.104 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR NO_X allowances under § 97.153.

(2) If the Administrator already recorded such CAIR NO_X allowances under § 97.153 and if the Administrator makes such determination before making deductions for the source that includes such recipient under § 97.154(b) for the control period, then the Administrator will deduct from the account in which such CAIR NO_X allowances were recorded under § 97.153 an amount of CAIR NO_X allowances allocated for the same or a prior control period equal to the amount of such already recorded CAIR NO_X allowances. The CAIR authorized account representative shall ensure that there are sufficient CAIR NO_X allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR NO_X allowances under § 97.153 and if the Administrator makes such determination after making deductions for the source that includes such recipient under § 97.154(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR NO_X allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR NO_X allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

§ 97.143 Compliance supplement pool.

(a) In addition to the CAIR NO_X allowances allocated under § 97.142, the Administrator may allocate for the control period in 2009 up to the following amount of CAIR NO_X allowances to CAIR NO_X units in the respective State:

State	Compliance supplement pool
Alabama	10,166
Delaware	843
District of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New Jersey	660
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898
Total	199,997

(b) For any CAIR NO_X unit in a State whose average annual NO_X emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and, if such unit is included in a NO_X averaging plan under § 76.11 of this chapter under the Acid Rain Program for such year, whose NO_X averaging plan has an actual weighted average NO_X emission rate for such year equal to or less than the actual weighted average NO_X emission rate for the year before such year achieves NO_X emission reductions in 2007 and 2008, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_X allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO_X unit shall monitor and report the NO_X emissions rate and the heat input of the unit in accordance with subpart HH of this part in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_X unit shall submit to the Administrator by July 1, 2009 a request, in a format specified by the Administrator, for allocation of an amount of CAIR NO_X allowances from the compliance supplement pool not exceeding the sum of the unit's heat input for the control

period in 2007 multiplied by the difference (if any greater than zero) between 0.25 lb/mmBtu and the unit's NO_X emission rate for the control period in 2007 plus the unit's heat input for the control period in 2008 multiplied by the difference (if any greater than zero) between 0.25 lb/mmBtu and the unit's NO_X emission rate for the control period in 2008, determined in accordance with subpart HH of this part and with the sum divided by 2,000 lb/ton and rounded to the nearest whole number of tons as appropriate.

(c) For any CAIR NO_X unit in a State whose compliance with CAIR NO_X emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_X allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR NO_X unit shall submit to the Administrator by July 1, 2009 a request, in a format specified by the Administrator, for allocation of an amount of CAIR NO_X allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_X allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_X unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_X allowances requested, the unit's compliance with CAIR NO_X emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_X emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_X allowances to prevent such undue risk.

(d) The Administrator will review each request under paragraph (b) or (c) of this section submitted by July 1, 2009 and will allocate CAIR NO_X allowances for the control period in 2009 to CAIR NO_X units in a State and covered by such request as follows:

(1) Upon receipt of each such request, the Administrator will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_X allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_X allowances not less than the total amount of CAIR NO_X allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate to each CAIR NO_X unit covered by such requests the amount of CAIR NO_X allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_X allowances than the total amount of CAIR NO_X allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate CAIR NO_X allowances to each CAIR NO_X unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

''Unit's allocation'' is the amount of CAIR NO_X allowances allocated to the unit from the State's compliance supplement pool.

''Unit's adjusted allocation'' is the amount of CAIR NO_X allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

''State's compliance supplement pool'' is the amount of CAIR NO_X allowances in the State's compliance supplement pool.

''Total adjusted allocations for all units'' is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By November 30, 2009, the Administrator will determine by order the allocations under paragraph (d)(2) or (3) of this section, as applicable. The Administrator will make available to the public each determination of CAIR NO_X allowances under such paragraph and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with paragraph (b) or (c) of this section and paragraph (d)(2) or (3) of this section, as appropriate. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with such paragraphs.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

§ 97.144 Alternative of allocation of CAIR NO_X allowances and compliance supplement pool by permitting authority.

(a) Notwithstanding §§ 97.141, 97.142, and 97.153 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(1) of this chapter providing for allocation of CAIR NO_X allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make and record allocations under §§ 97.141, 97.142, and 97.153 for the CAIR NO_X units in the State, and the Administrator will record the allocations made under such approved State implementation plan revision.

(b) Notwithstanding § 97.143, if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(2) of this chapter providing for allocation of the State's compliance supplement pool by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make and record allocations under § 97.143 for the CAIR NO_X units in the State, and the Administrator will record the allocations of the State's compliance supplement pool made under such approved State implementation plan revision.

(c)(1) In implementing paragraph (a) of this section and §§ 97.141, 97.142, and 97.153, the Administrator will ensure that the total amount of CAIR NO_X allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(p)(1) of this chapter, for a control period for CAIR NO_X sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

(2) In implementing paragraph (b) of this section and § 97.143, the Administrator will ensure that the total amount of CAIR NO_X allowances allocated, under such provisions and under a State's State implementation

plan revision approved in accordance with § 51.123(p)(2), for CAIR NO_X sources in the State will not exceed the State's compliance supplement pool.

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

1. The following States have State Implementation Plan revisions under § 51.123(p)(1) of this chapter approved by the Administrator and providing for allocation of CAIR NO_X allowances by the permitting authority under § 97.144(a):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.123(p)(2) of this chapter approved by the Administrator and providing for allocation of the Compliance Supplement Pool by the permitting authority under § 97.144(b):

[Reserved]

Subpart FF—CAIR NO_X Allowance Tracking System

§ 97.150 [Reserved]

§ 97.151 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.184(e), upon receipt of a complete certificate of representation under § 97.113, the Administrator will establish a compliance account for the CAIR NO_X 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 CAIR NO_X allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_X allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Annual Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR 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 CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X allowances held in the general account in all matters pertaining to the CAIR NO_X Annual Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_X allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(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 CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.* (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to CAIR NO_X allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR 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 CAIR NO_X allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_X Annual Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 97.152 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_X Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 97.153 Recordation of CAIR NO_X allowance allocations.

(a) By December 1, 2007, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at a source in accordance with § 97.142(a) and (b) for the control period in 2009.

(b) By December 1, 2008, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (b) for the control period in 2010.

(c) By December 1, 2009, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (b) for the control periods in 2011, 2012, and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (b) for the control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) *Serial numbers for allocated CAIR NO_X allowances.* When recording the allocation of CAIR NO_X allowances for a CAIR NO_X unit in a compliance account, the Administrator will assign each CAIR NO_X allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_X allowance is allocated.

§ 97.154 Compliance with CAIR NO_X emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_X allowances are available to be deducted for compliance with a source's CAIR NO_X emissions limitation for a control period in a given calendar year only if the CAIR NO_X 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 CAIR NO_X allowance transfer correctly submitted for recordation under § 97.160 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 § 97.161, of CAIR NO_X 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 CAIR NO_X allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_X emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_X allowances deducted equals the number

of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR NO_X units at the source for the control period; or

(2) If there are insufficient CAIR NO_X allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_X allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_X allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_X allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_X source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_X allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_X allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_X allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_X source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_X allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_X source or the CAIR NO_X units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, 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 CAIR NO_X Annual Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_X allowances from or transfer CAIR NO_X allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 97.155 Banking.

(a) CAIR NO_X allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_X allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X allowance is deducted or transferred under § 97.154, § 97.156, or subpart GG of this part.

§ 97.156 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_X Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 97.157 Closing of general accounts.

(a) The CAIR 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 § 97.160 for any CAIR NO_X allowances in the account to one or more other CAIR NO_X Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_X allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_X allowances into the account under § 97.160 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GG—CAIR NO_X Allowance Transfers

§ 97.160 Submission of CAIR NO_X allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_X allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_X allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_X allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 97.161 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_X allowance transfer, the Administrator will record a CAIR NO_X allowance transfer by moving each CAIR NO_X allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.160; and

(2) The transferor account includes each CAIR NO_X allowance identified by serial number in the transfer.

(b) A CAIR NO_X allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.154 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_X allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 97.162 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_X allowance transfer under § 97.161, the Administrator will notify the CAIR authorized account representatives of

both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_X allowance transfer that fails to meet the requirements of § 97.161(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_X allowance transfer for recordation following notification of non-recordation.

Subpart HH—Monitoring and Reporting

§ 97.170 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_X unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.102 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR NO_X unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 97.102. The owner or operator of a unit that is not a CAIR NO_X unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_X unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR NO_X unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the 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 CAIR NO_X unit that commences commercial operation before July 1, 2007, by January 1, 2008.

(2) For the owner or operator of a CAIR NO_X unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

(i) January 1, 2008; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR NO_X unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) 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 or add-on NO_X emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, by the date specified in § 97.184(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR NO_X opt-in unit under subpart II of this part, by the date on which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program as provided in § 97.184(g).

(c) *Reporting data.* (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR NO_X 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 NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(2) The owner or operator of a CAIR NO_X 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 or subpart H of, or appendix D or appendix E to, 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 CAIR NO_X unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.175.

(2) No owner or operator of a CAIR NO_X unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_X unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_X 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 § 97.105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with

another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.171(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_X unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.171 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_X unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.170(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, appendix D, and appendix E 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 § 97.170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 97.175 to determine whether the approval applies under the CAIR NO_X Annual Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_X unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.170(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.170(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 § 97.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.170(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the 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 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. Any fuel flowmeter system, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 97.170(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.170(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified,'' and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.173.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator 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 CAIR NO_X Annual Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator 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 Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_X Annual 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 Administrator 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 Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(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 (d)(3)(iv)(B) of this section is met, then the Administrator 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 Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.172(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (*i.e.*, NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) 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.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator 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.

§ 97.172 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 or subpart H of, or appendix D or appendix E to, 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 § 97.171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator 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 Administrator 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 § 97.171 for each disapproved monitoring system.

§ 97.173 Notifications.

The CAIR designated representative for a CAIR NO_X unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.174 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this

chapter, and the requirements of § 97.110(e)(1).

(b) *Monitoring plans.* The owner or operator of a CAIR NO_X unit shall comply with requirements of § 75.73(c) and (e) of this chapter .

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.171, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the NO_X mass emissions data and heat input data for the CAIR NO_X 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, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.170(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 through March 31, 2008;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the calendar quarter corresponding to the date specified in § 97.184(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X opt-in unit under subpart II of this part, the calendar quarter corresponding to the date on which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program as provided in § 97.184(g).

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CAIR NO_X units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Ozone Season Trading Program, CAIR SO_2 Trading Program, or the Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions.

§ 97.175 Petitions.

The CAIR designated representative of a CAIR NO_X unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

§ 97.176 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_X unit that monitors and reports NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart II—CAIR NO_X Opt-in Units

§ 97.180 Applicability.

A CAIR NO_X opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter establishing procedures concerning CAIR opt-in units;

(b) Is not a CAIR NO_X unit under § 97.104 and is not covered by a retired unit exemption under § 97.105 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 97.181 General.

(a) Except as otherwise provided in §§ 97.101 through 97.104, §§ 97.106 through 97.108, and subparts BB and CC and subparts FF through HH of this part, a CAIR NO_X opt-in unit shall be treated as a CAIR NO_X unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_X unit before issuance of a CAIR opt-in permit for such unit.

§ 97.182 CAIR designated representative.

Any CAIR NO_X opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_X units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_X units.

§ 97.183 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIRNO_X opt-in unit in § 97.180 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.186(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.122;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_X unit under § 97.104 and is not covered by a retired

unit exemption under § 97.105 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack, and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.122;

(3) A monitoring plan in accordance with subpart HH of this part;

(4) A complete certificate of representation under § 97.113 consistent with § 97.182, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X allowances under § 97.180(b) or § 97.188(c) (subject to the conditions in §§ 97.184(h) and 97.186(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR NO_X opt-in unit shall submit a complete CAIR permit application under § 97.122 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_X opt-in unit from the CAIR NO_X Annual Trading Program in accordance with § 97.186 or the unit becomes a CAIR NO_X unit under § 97.104, the CAIR NO_X opt-in unit shall remain subject to the requirements for a CAIR NO_X opt-in unit, even if the CAIR designated representative for the CAIR NO_X opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.184 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.183 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.183. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determines that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 97.184(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X Annual Trading Program in accordance with § 97.186.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X Annual Trading Program under § 97.184(g), during which period monitoring system availability must not be less than 90 percent under subpart HH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_X Annual Trading Program under § 97.184(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.

(d) *Baseline* NO_X *emission rate.* The unit's baseline NO_X emission rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_X emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_X emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X opt-in unit in § 97.180 and meets the elements certified in § 97.183(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_X opt-in unit

unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X opt-in unit in § 97.180 or meets the elements certified in § 97.183(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR NO_X Annual Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_X opt-in unit, and a CAIR NO_X unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR NO_X opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X opt-in unit of CAIR NO_X allowances under § 97.188(c) and such unit is repowered after its date of entry into the CAIR NO_X Annual Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_X opt-in unit replacing the original CAIR NO_X opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR NO_X opt-in unit, and the original CAIR NO_X opt-in unit shall no longer be treated as a CAIR NO_X opt-in unit or a CAIR NO_X unit.

§ 97.185 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.122;

(2) The certification in § 97.183(a)(2);

(3) The unit's baseline heat input under § 97.184(c);

(4) The unit's baseline NO_X emission rate under § 97.184(d);

(5) A statement whether the unit is to be allocated CAIR NO_X allowances under § 97.180(b) or § 97.188(c) (subject to the conditions in §§ 97.184(h) and 97.186(g));

(6) A statement that the unit may withdraw from the CAIR NO_X Annual Trading Program only in accordance with § 97.186; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.187.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.102 and, upon recordation by the Administrator under subpart FF, GG, or II of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_X allowances to or from the compliance account of the source that includes a CAIR NO_X opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format prescribed by the permitting authority, in the CAIR permit for the source where the CAIR NO_X opt-in unit is located.

§ 97.186 Withdrawal from CAIR NO_X Annual Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_X opt-in unit may withdraw from the CAIR NO_X Annual Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_X opt-in unit of the acceptance of the withdrawal of the CAIR NO_X opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR NO_X opt-in unit from the CAIR NO_X Annual Trading Program, the CAIR designated representative of the CAIR NO_X opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR NO_X Annual Trading Program under § 97.184(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR NO_X opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_X Annual Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X opt-in unit must meet the requirement to hold CAIR NO_X allowances under § 97.106(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_X opt-in unit CAIR NO_X allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 97.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_X opt-in unit may submit a CAIR NO_X allowance transfer for any remaining CAIR NO_X allowances to another CAIR NO_X Allowance Tracking System in accordance with subpart GG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_X allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X opt-in unit of the acceptance of the withdrawal of the CAIR NO_X opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X opt-in unit that the CAIR NO_X opt-in unit's request to withdraw is denied. Such CAIR NO_X opt-in unit shall continue to be a CAIR NO_X opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_X opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_X opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X Annual Trading Program concerning any control periods for which the unit is a CAIR NO_X opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR NO_X opt-in unit's request to withdraw,

the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR NO_X Annual Trading Program.* Once a CAIR NO_X opt-in unit withdraws from the CAIR NO_X Annual Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.183 for such CAIR NO_X opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.184.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_X opt-in unit shall not be eligible to withdraw from the CAIR NO_X Annual Trading Program if the CAIR designated representative of the CAIR NO_X opt-in unit requests, and the permitting authority issues a CAIR NO_X opt-in permit providing for, allocation to the CAIR NO_X opt-in unit of CAIR NO_X allowances under § 97.188(c).

§ 97.187 Change in regulatory status.

(a) *Notification.* If a CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_X opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, the permitting authority will revise the CAIR NO_X opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.123 as of the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_X opt-in unit that becomes a CAIR NO_X unit under § 97.104, CAIR NO_X allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 97.188 for any control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104; and

(B) If the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 is not December 31, the CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 97.188 for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X unit that becomes a CAIR NO_X unit under § 97.104 contains the CAIR NO_X allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, the CAIR NO_X opt-in unit will be treated, solely for purposes of CAIR NO_X allowance allocations under § 97.142, as a unit that commences operation on the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 and will be allocated CAIR NO_X allowances under § 97.142.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 is not January 1, the following amount of CAIR NO_X allowances will be allocated to the CAIR NO_X opt-in unit (as a CAIR NO_X unit) under § 97.142 for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104:

(A) The amount of CAIR NO_X allowances otherwise allocated to the CAIR NO_X opt-in unit (as a CAIR NO_X unit) under § 97.142 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 97.188 CAIR NO_X allowance allocations to CAIR NO_X opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.184(e), the permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_X allowance allocation will be the lesser of:

(i) The CAIR NO_X opt-in unit's baseline heat input determined under § 97.184(c); or

(ii) The CAIR NO_X opt-in unit's heat input, as determined in accordance with subpart HH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g).

(2) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X allowance allocations will be the lesser of:

(i) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.184(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period for which CAIR NO_X allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_X emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a

CAIR NO_X opt-in unit of CAIR NO_X allowances under this paragraph (subject to the conditions in §§ 97.184(h) and 97.186(g)), the permitting authority will allocate to the CAIR NO_X opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_X allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X allowance allocations will be the lesser of:

(A) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.184(d); or

(B) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period in which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g).

(iii) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_X allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating the CAIR NO_X allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.184(d); or

(C) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period for which CAIR NO_X allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_X opt-in unit, the CAIR NO_X allowances allocated by the permitting authority to the CAIR NO_X opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_X opt-in unit, the CAIR NO_X allowances allocated by the permitting authority to the CAIR NO_X opt-in unit under paragraph (a)(2) of this section.

Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Opt-In Units

1. The following States have State Implementation Plan revisions under § 51.123(p)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_X opt-in units under subpart II of this part and allocation of CAIR NO_X allowances to such units under § 97.188(b):

2. The following States have State Implementation Plan revisions under § 51.123(p)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_X opt-in units under subpart II of this part and allocation of CAIR NO_X allowances to such units under § 97.188(c):

4. Part 97 is amended by adding subparts AAA through CCC, adding and reserving subparts DDD and EEE and adding subparts FFF through III to read as follows:

Subpart AAA—CAIR SO_2 Trading Program General Provisions

Sec.

Subpart BBB—CAIR Designated Representative for CAIR SO_2 Sources

Subpart CCC—Permits

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

Subpart FFF—CAIR SO_2 Allowance Tracking System

Subpart GGG—CAIR SO_2 Allowance Transfers

Subpart HHH—Monitoring and Reporting

Subpart III—CAIR SO_2 Opt-in Units

Appendix A to Subpart III of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR SO_2 Opt-In Units

Subpart AAA—CAIR SO_2 Trading Program General Provisions

§ 97.201 Purpose.

This subpart and subparts BBB through III set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) SO_2 Trading Program, under section 110 of the Clean Air Act and § 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

§ 97.202 Definitions.

The terms used in this subpart and subparts BBB through III shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR SO_2 Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR SO_2 allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit and, with regard to CAIR SO_2 allowances issued under § 97.288, the determination by the permitting authority of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit.

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 CAIR SO_2 allowance transfer must be submitted for recordation in a CAIR SO_2 source's compliance account in order to be used to meet the source's CAIR SO_2 emissions limitation for such control period in accordance with § 97.254.

Alternate CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 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 subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBB and III of this part, to transfer and otherwise dispose of CAIR SO_2 allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 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 subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the designated representative under the Hg Budget Trading Program.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X Ozone Season source means a source that includes one or more CAIR NO_X Ozone Season units.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X Ozone Season unit means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under § 97.304 and a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_X source means a source that includes one or more CAIR NO_X units.

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 97.104 and a CAIR NO_X opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO_2 Trading Program requirements applicable to a CAIR SO_2 source, to each CAIR SO_2 unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 allowance means a limited authorization issued by the Administrator under the Acid Rain Program, by a permitting authority under § 97.288, or by the permitting authority under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) of this chapter, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO_2 Trading Program as follows:

(1) For one CAIR SO_2 allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 97.254(b);

(2) For one CAIR SO_2 allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 97.254(b); and

(3) For one CAIR SO_2 allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 97.254(b).

(4) An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program, § 97.288, or provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) of this chapter shall not be a CAIR SO_2 allowance.

CAIR SO_2 allowance deduction or *deduct CAIR SO_2 allowances* means the permanent withdrawal of CAIR SO_2 allowances by the Administrator from a compliance account, *e.g.*, in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO_2 units at a CAIR SO_2 source for a control period, determined in accordance with subpart HHH of this part, or to account for excess emissions.

CAIR SO_2 Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO_2 allowances under the CAIR SO_2 Trading Program. This is the same system as the Allowance Tracking System under § 72.2 of this chapter by which the Administrator records allocations, deduction, and transfers of Acid Rain SO_2 allowances under the Acid Rain Program.

CAIR SO_2 Allowance Tracking System account means an account in the CAIR SO_2 Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO_2 allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR SO_2 allowances held or *hold CAIR SO_2 allowances* means the CAIR SO_2 allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in a CAIR SO_2 Allowance Tracking System account.

CAIR SO_2 emissions limitation means, for a CAIR SO_2 source, the tonnage equivalent of the CAIR SO_2 allowances available for deduction for the source under § 97.254(a) and (b) for a control period.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and § 52.36 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 97.204 and, except for purposes of § 97.205, a CAIR SO_2 opt-in unit under subpart III of this part.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

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.

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.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-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 the calendar year in 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 § 97.205.

(i) For a unit that is a CAIR SO_2 unit under § 97.204 on the later of November 15, 1990 or 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 CAIR SO_2 unit under § 97.204 on the later of November 15, 1990 or 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), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.205, for a unit that is not a CAIR SO_2 unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 97.204.

(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), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 97.284(h) or § 97.287(b)(3), for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 97.284(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 (3) 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), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

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 § 97.205.

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source (*e.g.*, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, 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 § 97.284(h) or § 97.287(b)(3), for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 97.284(b)(1)(i).

(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 CAIR SO_2 Allowance Tracking System account, established by the Administrator for a CAIR SO_2 source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR SO_2 source under subpart FFF or III of this part, in which any CAIR SO_2 allowance allocations for the CAIR SO_2 units at the source are initially recorded and in which are held any CAIR SO_2 allowances available for use for a control period in order to meet the source's CAIR SO_2 emissions limitation in accordance with § 97.254.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide 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 continuous emission monitoring systems required under subpart HHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A sulfur dioxide monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H2O;

(4) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical

equations from which the CO_2 concentration is derived) and 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, except as provided in § 97.206(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Excess emissions means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO_2 units at a CAIR SO_2 source during a control period that exceeds the CAIR SO_2 emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

General account means a CAIR SO_2 Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

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 CAIR designated representative and determined by the Administrator in accordance with subpart HHH of this part 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 Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, as a means of reduction in national Hg emissions.

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.

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 subpart HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or *Federal SO_2 emissions limitation* means, with regard to a unit, the lowest SO_2 emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, 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 CAIR SO_2 unit or a CAIR SO_2 source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR SO_2 source or a CAIR SO_2 unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR SO_2 unit at the source or the CAIR SO_2 unit;

(ii) Any holder of a leasehold interest in a CAIR SO_2 unit at the source or the CAIR SO_2 unit; or

(iii) Any purchaser of power from a CAIR SO_2 unit at the source or the CAIR SO_2 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 CAIR SO_2 unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR SO_2 allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO_2 allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR SO_2 Trading Program in accordance with subpart CCC of this part 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 CAIR SO_2 allowances, the movement of CAIR SO_2 allowances by the Administrator into or between CAIR SO_2 Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

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.

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.

Serial number means, for a CAIR SO_2 allowance, the unique identification number assigned to each CAIR SO_2 allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

State means one of the States or the District of Columbia that is subject to the CAIR SO_2 Trading Program pursuant to § 52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any ''submission'' 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 Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO_2 emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, 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, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

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 heating 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.

§ 97.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBB through III 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.

§ 97.204 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR SO_2 units, and any source that

includes one or more such units shall be a CAIR SO_2 source, subject to the requirements of this subpart and subparts BBB through HHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR SO_2 unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR SO_2 unit on the date on which it first serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR SO_2 units:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe 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.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR SO_2 Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit 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) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division, U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR SO_2 Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

§ 97.205 Retired unit exemption.

(a)(1) Any CAIR SO_2 unit that is permanently retired and is not a CAIR SO_2 opt-in unit under subpart III of this part shall be exempt from the CAIR SO_2 Trading Program, except for the provisions of this section, § 97.202, § 97.203, § 97.204, § 97.206(c)(4) through (7), § 97.207, and subparts BBB, FFF, and GGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR SO_2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR 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 subpart CCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under 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.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO_2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under 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 CAIR designated representative of the source submits a complete CAIR permit application under § 97.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(5) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, 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.

§ 97.206 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.222 in accordance with the deadlines specified in § 97.221; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided under subpart III of this part, the owners and operators of a CAIR SO_2 source that is not otherwise required to have a title V operating permit and each CAIR SO_2 unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO_2 source and such CAIR SO_2 unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO_2 source with the CAIR SO_2 emissions limitation under paragraph (c) of this section.

(c) *Sulfur dioxide emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO_2 allowances available for compliance deductions for the control period, as determined in accordance with § 97.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO_2 units at the source, as determined in accordance with subpart HHH of this part.

(2) A CAIR SO_2 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 97.270(b)(1), (2), or (5) and for each control period thereafter.

(3) A CAIR SO_2 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 CAIR SO_2 allowance was allocated.

(4) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 Allowance Tracking System accounts in accordance with subparts FFF and GGG of this part.

(5) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.205 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR SO_2 allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR SO_2 source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR SO_2 source emits sulfur dioxide during any control period in excess of the CAIR SO_2 emissions limitation, then:

(1) The owners and operators of the source and each CAIR SO_2 unit at the source shall surrender the CAIR SO_2 allowances required for deduction under § 97.254(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

(2) Each ton 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.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR SO_2 source and each CAIR SO_2 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 § 97.213 for the CAIR designated representative for the source and each CAIR SO_2 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 § 97.213 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO_2 Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO_2 Trading Program or to demonstrate compliance with the requirements of the CAIR SO_2 Trading Program.

(2) The CAIR designated representative of a CAIR SO_2 source and each CAIR SO_2 unit at the source shall submit the reports required under the CAIR SO_2 Trading Program, including those under subpart HHH of this part.

(f) *Liability.* (1) Each CAIR SO_2 source and each CAIR SO_2 unit shall meet the requirements of the CAIR SO_2 Trading Program.

(2) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 source or the CAIR designated representative of a CAIR SO_2 source shall also apply to the owners and operators of such source and of the CAIR SO_2 units at the source.

(3) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 unit or the CAIR designated representative of a CAIR SO_2 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR SO_2 Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO_2 source or CAIR SO_2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO_2 Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.208 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO_2 Trading Program are set forth in part 78 of this chapter.

Subpart BBB—CAIR designated representative for CAIR SO_2 sources

§ 97.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.211, each CAIR SO_2 source, including all CAIR SO_2 units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO_2 Trading Program concerning the source or any CAIR SO_2 unit at the source.

(b) The CAIR designated representative of the CAIR SO_2 source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO_2 units at the source and shall act in accordance with the certification statement in § 97.213(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO_2 source represented and each CAIR SO_2 unit at the source in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO_2 Allowance Tracking System account will be established for a CAIR SO_2 unit at a source, until the Administrator has received a complete certificate of representation under § 97.213 for a CAIR designated representative of the source and the CAIR SO_2 units at the source.

(e)(1) Each submission under the CAIR SO_2 Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO_2 source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR SO_2 source or a CAIR SO_2 unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.211 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.202, 97.210(a) and (d), 97.212, 97.213, and 97.251 and § 97.282, whenever the term ''CAIR designated representative'' is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 97.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a CAIR SO_2 source or a CAIR SO_2 unit is not included in the list of owners and operators in the certificate of representation under § 97.213, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions 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 CAIR SO_2 source or a CAIR SO_2 unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.213 amending the list of owners and operators to include the change.

§ 97.213 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR SO_2 source, and each CAIR SO_2 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 CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR SO_2 source and of each CAIR SO_2 unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) ''I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO_2 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of the owners and operators of the source and of each CAIR SO_2 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 CAIR SO_2 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 CAIR SO_2 unit, or where a customer purchases power from a CAIR SO_2 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 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO_2 unit at the source; and CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 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 CAIR SO_2 allowances by contract, CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.214 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.213 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.213 is received by the Administrator.

(b) Except as provided in § 97.212(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR SO_2 Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

Subpart CCC—Permits

§ 97.220 General CAIR SO_2 Trading Program permit requirements.

(a) For each CAIR SO_2 source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting

authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart III of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR SO_2 source and the CAIR SO_2 units at the source covered by the CAIR permit, all applicable CAIR SO_2 Trading Program, CAIR NO_X Annual Trading Program, and CAIR NO_X Ozone Season Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.221 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR SO_2 source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.222 for the source covering each CAIR SO_2 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 CAIR SO_2 unit commences operation.

(b) *Duty to Reapply.* For a CAIR SO_2 source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.222 for the source covering each CAIR SO_2 unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 97.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR SO_2 source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR SO_2 source;

(b) Identification of each CAIR SO_2 unit at the CAIR SO_2 source; and

(c) The standard requirements under § 97.206.

§ 97.223 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.222.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from the compliance account of the CAIR SO_2 source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO_2 source's title V operating permit or other federally enforceable permit as applicable.

§ 97.224 CAIR permit revisions.

Except as provided in § 97.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

Subpart FFF—CAIR SO_2 Allowance Tracking System

§ 97.250 [Reserved]

§ 97.251 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.284(e), upon receipt of a complete certificate of representation under § 97.213, the Administrator will establish a compliance account for the CAIR SO_2 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 CAIR SO_2 allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO_2 allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR 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 CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO_2 allowances held in the general account in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(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 CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.* (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to CAIR SO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR 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 CAIR SO_2 allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO_2 allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO_2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 97.252 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO_2 Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO_2 allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 97.253 Recordation of CAIR SO_2 allowances.

(a)(1) After a compliance account is established under § 97.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is

established and any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO_2 allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(b)(1) After a general account is established under § 97.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the general account any CAIR SO_2 allowance allocated for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(c) *Serial numbers for allocated CAIR SO_2 allowances.* When recording the allocation of CAIR SO_2 allowances issued by a permitting authority under § 97.288, the Administrator will assign each such CAIR SO_2 allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO_2 allowance is allocated.

§ 97.254 Compliance with CAIR SO_2 emissions limitation.

(a) *Allowance transfer deadline.* The CAIR SO_2 allowances are available to be deducted for compliance with a source's CAIR SO_2 emissions limitation for a control period in a given calendar year only if the CAIR SO_2 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 CAIR SO_2 allowance transfer correctly submitted for recordation under § 97.260 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 or for deduction under part 77 of this chapter.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.261, of CAIR SO_2 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 CAIR SO_2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period as follows:

(1) For a CAIR SO_2 source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 97.288, that is required under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.

(ii) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 97.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.

(iii) Treating the CAIR SO_2 allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(A) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(B) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) remain in the compliance account.

(2) For a CAIR SO_2 source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(i) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(ii) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority § 97.288) remain in the compliance account.

(c)(1) *Identification of CAIR SO_2 allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO_2 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR SO_2 allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO_2 allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;

(ii) Any CAIR SO_2 allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(iii) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;

(iv) Any CAIR SO_2 allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(v) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and

(vi) Any CAIR SO_2 allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, 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 CAIR SO_2 source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO_2 allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under § 97.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section the sum of the following amounts:

(i) The number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR SO_2 allowances required to be deducted under paragraph (b)(1)(ii) of this section; and

(ii) Two times: (A) The number of tons of the source's excess emissions, if the source is not subject to an Acid Rain emissions limitation; or

(B) The number of tons of the source's excess emissions minus the amount of the CAIR SO_2 allowances required to be deducted under paragraph (b)(1)(ii) of this section, if the source is subject to an Acid Rain emissions limitation.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR SO_2 source or the CAIR SO_2 units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, 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 CAIR SO_2 Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO_2 allowances from or transfer CAIR SO_2 allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 97.255 Banking.

(a) CAIR SO_2 allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR SO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO_2 allowance is deducted or transferred under § 97.254, § 97.256, or subpart GGG of this part.

§ 97.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO_2 Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 97.257 Closing of general accounts.

(a) The CAIR 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 § 97.260 for any CAIR SO_2 allowances in the account to one or more other CAIR SO_2 Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO_2 allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO_2 allowances into the account under § 97.260 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG—CAIR SO_2 Allowance Transfers

§ 97.260 Submission of CAIR SO_2 allowance transfers.

(a) A CAIR authorized account representative seeking recordation of a CAIR SO_2 allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO_2 allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The account numbers of both the transferor and transferee accounts;

(2) The serial number of each CAIR SO_2 allowance that is in the transferor account and is to be transferred; and

(3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.

(b)(1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

(2) The statement under paragraph (b)(1) of this section shall include the following: ''By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the

account is received by the Administrator.''

§ 97.261 EPA recordation.

(a) Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO_2 allowances allocated to a CAIR SO_2 unit or as provided in paragraph (b) of this section) of receiving a CAIR SO_2 allowance transfer, the Administrator will record a CAIR SO_2 allowance transfer by moving each CAIR SO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.260;

(2) The transferor account includes each CAIR SO_2 allowance identified by serial number in the transfer; and

(3) The transfer is in accordance with the limitation on transfer under § 74.42 of this chapter and § 74.47(c) of this chapter, as applicable.

(b) A CAIR SO_2 allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO_2 allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.254 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR SO_2 allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 97.262 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR SO_2 allowance transfer under § 97.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR SO_2 allowance transfer that fails to meet the requirements of § 97.261(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR SO_2 allowance transfer for recordation following notification of non-recordation.

Subpart HHH—Monitoring and Reporting

§ 97.270 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO_2 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.202 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR SO_2 unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 97.202. The owner or operator of a unit that is not a CAIR SO_2 unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR SO_2 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR SO_2 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO_2 mass emissions and individual unit heat input (including all systems required to monitor SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.271 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the 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 CAIR SO_2 unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR SO_2 unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR SO_2 unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) 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 or add-on SO_2 emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 97.284(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR SO_2 opt-in unit under subpart III of this part, by the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program as provided in § 97.284(g).

(c) *Reporting data.* (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR SO_2 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 SO_2 concentration, SO_2 emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(2) The owner or operator of a CAIR SO_2 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 or appendix D to 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 CAIR SO_2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.275.

(2) No owner or operator of a CAIR SO_2 unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR SO_2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR SO_2 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 § 97.205 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.271(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR SO_2 unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.271 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR SO_2 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.270(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 and appendix D 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 § 97.270(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR SO_2 unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 97.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.270(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 § 97.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.270(a)(1) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the 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 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. Any fuel flowmeter system under § 97.270(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.270(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified,'' and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.273.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator 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 CAIR SO_2 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in

accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator 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 Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR SO_2 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator 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 Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(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 (d)(3)(iv)(B) of this section is met, then the Administrator 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 Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.272(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*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 fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator 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.

§ 97.272 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 or appendix D to 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 § 97.271 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator 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 Administrator 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 § 97.271 for each disapproved monitoring system.

§ 97.273 Notifications.

The CAIR designated representative for a CAIR SO_2 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.274 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.210(e)(1).

(b) *Monitoring plans.* The owner or operator of a CAIR SO_2 unit shall comply with requirements of § 75.62 of this chapter .

(c) *Certification applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.271, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the SO_2 mass emissions data and heat input data for the CAIR SO_2 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;

(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 § 97.270(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the calendar quarter corresponding to the date specified in § 97.284(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X opt-in unit under subpart III of this part, the calendar quarter corresponding to the date on which the CAIR NO_X opt-in unit enters the CAIR SO_2 Trading Program as provided in § 97.284(g).

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For CAIR SO_2 units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program, CAIR NO_X Ozone Season Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO_2 emissions.

§ 97.275 Petitions.

The CAIR designated representative of a CAIR SO_2 unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

§ 97.276 Additional requirements to provide heat input data.

The owner or operator of a CAIR SO_2 unit that monitors and reports SO_2 mass emissions using a SO_2 concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart III—CAIR SO_2 Opt-in Units

§ 97.280 Applicability.

A CAIR SO_2 opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.124(r)(1), (2), or (3) of this chapter establishing procedures concerning CAIR opt-in units;

(b) Is not a CAIR SO_2 unit under § 97.204 and is not covered by a retired unit exemption under § 97.205 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect and is not an opt-in source under part 74 of this chapter;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 97.281 General.

(a) Except as otherwise provided in §§ 97.201 through 97.204, §§ 97.206 through 97.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR SO_2 opt-in unit shall be treated as a CAIR SO_2 unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR SO_2 unit before issuance of a CAIR opt-in permit for such unit.

§ 97.282 CAIR designated representative.

Any CAIR SO_2 opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this

subpart, located at the same source as one or more CAIR SO_2 units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO_2 units.

§ 97.283 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X opt-in unit in § 97.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.286(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.222;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR SO_2 unit under § 97.204 and is not covered by a retired unit exemption under § 97.205 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Is not, and so long as the unit is a CAIR SO_2 opt-in unit, will not become, an opt-in source under part 74 of this chapter;

(iv) Vents all of its emissions to a stack, and

(v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.222;

(3) A monitoring plan in accordance with subpart HHH of this part;

(4) A complete certificate of representation under § 97.213 consistent with § 97.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X allowances under § 97.280(b) or § 97.288(c) (subject to the conditions in §§ 97.284(h) and 97.286(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR SO_2 opt-in unit shall submit a complete CAIR permit application under § 97.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR SO_2 opt-in unit from the CAIR SO_2 Annual Trading Program in accordance with § 97.286 or the unit becomes a CAIR SO_2 unit under § 97.204, the CAIR SO_2 opt-in unit shall remain subject to the requirements for a CAIR SO_2 opt-in unit, even if the CAIR designated representative for the CAIR SO_2 opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.183 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2) or (3) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determines that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the SO_2 emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 97.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO_2 Trading Program in accordance with § 97.286.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR SO_2 Trading Program under § 97.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the SO_2 emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR SO_2 Trading Program under § 97.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.

(d) *Baseline SO_2 emission rate.* The unit's baseline SO_2 emission rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_X emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on SO_2 emission controls during any

such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on SO_2 emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline SO_2 emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 97.280 and meets the elements certified in § 97.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR SO_2 opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 97.280 or meets the elements certified in § 97.283(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR SO_2 Annual Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR SO_2 opt-in unit, and a CAIR SO_2 unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR SO_2 opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 97.288(c) and such unit is repowered after its date of entry into the CAIR SO_2 Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR SO_2 opt-in unit replacing the original CAIR SO_2 opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR SO_2 opt-in unit, and the original CAIR SO_2 opt-in unit shall no longer be treated as a CAIR SO_2 opt-in unit or a CAIR SO_2 unit.

§ 97.285 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.222;

(2) The certification in § 97.283(a)(2);

(3) The unit's baseline heat input under § 97.284(c);

(4) The unit's baseline SO_2 emission rate under § 97.284(d);

(5) A statement whether the unit is to be allocated CAIR SO_2 allowances under § 97.280(b) or § 97.288(c) (subject to the conditions in §§ 97.284(h) and 97.286(g));

(6) A statement that the unit may withdraw from the CAIR SO_2 Trading Program only in accordance with § 97.286; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.287.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part or this subpart, every allocation, transfer, or deduction of CAIR SO_2 allowances to or from the compliance account of the source that includes a CAIR SO_2 opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format prescribed by the permitting authority, in the CAIR permit for the source where the CAIR SO_2 opt-in unit is located.

§ 97.286 Withdrawal from CAIR SO_2 Trading Program.

Except as provided under paragraph (g) of this section, a CAIR SO_2 opt-in unit may withdraw from the CAIR SO_2 Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR SO_2 opt-in unit from the CAIR SO_2 Trading Program, the CAIR designated representative of the CAIR SO_2 opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO_2 Trading Program under § 97.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR SO_2 opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR SO_2 Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO_2 opt-in unit must meet the requirement to hold CAIR SO_2 allowances under § 97.206(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit CAIR SO_2 allowances equal in amount to and allocated for the same or a prior control period as any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 97.288 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO_2 units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO_2 opt-in unit may submit a CAIR SO_2 allowance transfer for any remaining CAIR SO_2 allowances to another CAIR SO_2 Allowance Tracking System in accordance with subpart GGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR SO_2 allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit that the CAIR SO_2 opt-in unit's request to withdraw is denied. Such CAIR SO_2 opt-in unit shall continue to be a CAIR SO_2 opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the

CAIR permit covering the CAIR SO_2 opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR SO_2 opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO_2 Trading Program concerning any control periods for which the unit is a CAIR SO_2 opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR SO_2 opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR SO_2 Annual Trading Program.* Once a CAIR SO_2 opt-in unit withdraws from the CAIR SO_2 Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.283 for such CAIR SO_2 opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.284.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR SO_2 opt-in unit shall not be eligible to withdraw from the CAIR SO_2 Trading Program if the CAIR designated representative of the CAIR SO_2 opt-in unit requests, and the permitting authority issues a CAIR SO_2 opt-in permit providing for, allocation to the CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 97.288(c).

§ 97.287 Change in regulatory status.

(a) *Notification.* If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 7.204, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR SO_2 opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204, the permitting authority will revise the CAIR SO_2 opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.223 as of the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit that becomes a CAIR SO_2 unit under § 97.204, CAIR SO_2 allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 97.288 for any control period after the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204; and

(B) If the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204 is not December 31, the CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 97.288 for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO_2 unit that becomes a CAIR SO_2 unit under § 97.204 contains the CAIR SO_2 allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

§ 97.288 CAIR SO_2 allowance allocations to CAIR SO_2 opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.284(e), the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO_2 opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline heat input determined under § 97.284(c); or

(ii) The CAIR SO_2 opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g).

(2) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 97.284(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(3) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the SO_2 emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under this paragraph (subject to the conditions in §§ 97.284(h) and 97.286(g)), the permitting authority will allocate to the CAIR SO_2 opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) For each control period in 2010 through 2014 for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 97.284(d); or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g).

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating the CAIR NO_X allowance allocation will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 97.284(d) multiplied by 10 percent; or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(2) of this section.

Appendix A to Subpart III of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR SO_2 Opt-in Units

1. The following States have State Implementation Plan revisions under § 51.124(r) of this chapter approved by the Administrator and establishing procedures providing for CAIR SO_2 opt-in units under subpart III of this part and allocation of CAIR SO_2 allowances to such units under § 97.288(b):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.124(r) of this chapter approved by the Administrator and establishing procedures providing for CAIR SO_2 opt-in units under subpart III of this part and allocation of CAIR SO_2 allowances to such units under § 97.288(c):

[Reserved]

5. Part 97 is amended by adding subparts AAAA through CCCC, adding and reserving subpart DDDD and adding subparts EEEE through IIII to read as follows:

Subpart AAAA—CAIR NO_X Ozone Season Trading Program General Provisions

Sec.

Subpart BBBB—CAIR Designated Representative for CAIR NO_X Ozone Season Sources

Subpart CCCC—Permits

Subpart DDDD—[Reserved]

Subpart EEEE—CAIR NO_X Ozone Season Allowance Allocations

Subpart FFFF—CAIR NO_X Ozone Season Allowance Tracking System

Subpart GGGG—CAIR NO_X Ozone Season Allowance Transfers

Subpart HHHH—Monitoring and Reporting

Subpart IIII—CAIR NO_X Ozone Season Opt-in Units

Subpart AAAA—CAIR NO_X Ozone Season Trading Program General Provisions

§ 97.301 Purpose.

This subpart and subparts BBBB through HHHH set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the—Federal Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program, under section 110 of the Clean Air Act and § 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

§ 97.302 Definitions.

The terms used in this subpart and subparts BBBB through IIII shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_X Ozone Season Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR NO_X Ozone Season allowances issued under subpart EEEE, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit or a new unit set-aside and, with regard to CAIR NO_X Ozone Season allowances issued under § 97.388, the determination by the permitting authority of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit.

Allowance transfer deadline means, for a control period, midnight of November 30, if it is a business day, or, if November 30 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR NO_X Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_X Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_X Ozone Season emissions limitation for such control period in accordance with § 97.354.

Alternate CAIR designated representative means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season 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 subparts BBBB and IIII of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBBB and IIII of this part, to transfer and otherwise dispose of CAIR NO_X Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season 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 subparts BBBB and IIII of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the designated representative under the Hg Budget Trading Program.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X Ozone Season allowance means a limited authorization issued by the permitting authority or the Administrator under subpart EEEE of this part, § 97.388, or provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Ozone Season Trading Program or

a limited authorization issued by the permitting authority for a control period during 2003 through 2008 under the NO_X Budget Trading Program in accordance with § 51.121(p) of this chapter to emit one ton of nitrogen oxides during a control period, provided that the provision in § 51.121(b)(2)(i)(E) of this chapter shall not be used in applying this definition. An authorization to emit nitrogen oxides that is not issued under subpart EEEE of this part, § 97.388, or provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter or that meet the requirements of § 51.121(p) of this chapter shall not be a CAIR NO_X Ozone Season allowance.

CAIR NO_X Ozone Season allowance deduction or *deduct CAIR NO_X Ozone Season allowances* means the permanent withdrawal of CAIR NO_X Ozone Season allowances by the Administrator from a compliance account, *e.g.*, in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source for a control period, determined in accordance with subpart HHHH of this part, or to account for excess emissions.

CAIR NO_X Ozone Season Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_X Ozone Season allowances under the CAIR NO_X Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_X Ozone Season Allowance Tracking System account means an account in the CAIR NO_X Ozone Season Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X Ozone Season allowances.

CAIR NO_X Ozone Season allowances held or *hold CAIR NO_X Ozone Season allowances* means the CAIR NO_X Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFFF, GGGG, and IIII of this part, in a CAIR NO_X Ozone Season Allowance Tracking System account.

CAIR NO_X Ozone Season emissions limitation means, for a CAIR NO_X Ozone Season source, the tonnage equivalent of the CAIR NO_X Ozone Season allowances available for deduction for the source under § 97.354(a) and (b) for a control period.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X Ozone Season source means a source that includes one or more CAIR NO_X Ozone Season units.

CAIR NO_X Ozone Season unit means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under § 97.304 and, except for purposes of § 97.305 and subpart EEEE of this part, a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_X source means a source that includes one or more CAIR NO_X units.

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 97.104 and a CAIR NO_X opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCCC of this part, including any permit revisions, specifying the CAIR NO_X Ozone Season Trading Program requirements applicable to a CAIR NO_X Ozone Season source, to each CAIR NO_X Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and § 52.36 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 97.204 and a CAIR SO_2 opt-in unit under subpart III of this part.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

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.

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: (1) Except for purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(2) For purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-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 the calendar year in 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 § 97.305.

(i) For a unit that is a CAIR NO_X Ozone Season unit under § 97.304 on the later of November 15, 1990 or 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 CAIR NO_X Ozone Season unit under § 97.304 on the later of November 15, 1990 or 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), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.305, for a unit that is not a CAIR NO_X Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 97.304.

(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), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 97.384(h) or § 97.387(b)(3), for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 97.384(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 (3) 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), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

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 § 97.305.

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is replaced by a unit at the same source (*e.g.*, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.305, for a unit that is a CAIR NO_X Ozone Season unit under § 97.304(d), but not on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (1) of this definition, and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 97.304(d).

(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), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 97.384(h) or § 97.387(b)(3), for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 97.384(b)(1)(i).

(i) For a unit with a date for commencement of operation as defined in paragraph (3) 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 (3) of this definition and that is subsequently replaced by a unit at the 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), (2), or (3) 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 CAIR NO_X Ozone Season Allowance Tracking

System account, established by the Administrator for a CAIR NO_X Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR NO_X Ozone Season allowance allocations for the CAIR NO_X Ozone Season units at the source are initially recorded and in which are held any CAIR NO_X Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_X Ozone Season emissions limitation in accordance with § 97.354.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides 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 continuous emission monitoring systems required under subpart HHHH of this part:

(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 standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) 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 or *ozone season* means the period beginning May 1 of a calendar year, except as provided in § 97.306(c)(2) and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHHH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source during a control period that exceeds the CAIR NO_X Ozone Season emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_X Ozone Season Allowance Tracking System account, established under subpart FFFF of this part, 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 CAIR designated representative and determined by the Administrator in accordance with subpart HHHH of this part 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 Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, as a means of reducing national Hg emissions.

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.

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 subpart HHHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted

monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_X emissions limitation means, with regard to a unit, the lowest NO_X emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, 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.

Oil-fired means, for purposes of subpart EEEE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_X Ozone Season unit or a CAIR NO_X Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit;

(ii) Any holder of a leasehold interest in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit; or

(iii) Any purchaser of power from a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_X Ozone Season allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_X Ozone Season Trading Program in accordance with subpart CCCC of this part 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 CAIR NO_X Ozone Season allowances, the movement of CAIR NO_X Ozone Season allowances by the Administrator into or between CAIR NO_X Ozone Season 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.

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.

Serial number means, for a CAIR NO_X Ozone Season allowance, the unique identification number assigned to each CAIR NO_X Ozone Season allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

State means one of the States or the District of Columbia that is subject to the CAIR NO_X Ozone Season Trading Program pursuant to § 52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any ''submission'' 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 Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NOX Ozone Season emissions limitation, total tons of

nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, 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, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

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 heating 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.

§ 97.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBBB through IIII 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.

§ 97.304 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_X Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_X Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X Ozone Season unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X Ozone Season unit on the date on which it first serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (2)(i), or (2)(ii) of this section shall not be CAIR NO_X Ozone Season units:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe 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.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_X Ozone Season Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit 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) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division, U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_X Ozone Season Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

(d) Notwithstanding paragraphs (a) and (b) of this section, if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(1) of this chapter providing for the inclusion in the CAIR NO_X Ozone Season Trading Program of all units that are not otherwise CAIR NO_X Ozone Season units under paragraphs (a) and (b) of this section and that are NO_X Budget units covered by the State's emissions trading program approved under § 51.121(p) of this chapter, such units shall be CAIR NO_X Ozone Season units as of the first date that they are NO_X Budget units under the NO_X Budget Trading Program under § 51.121(p) of this chapter.

§ 97.305 Retired unit exemption.

(a)(1) Any CAIR NO_X Ozone Season unit that is permanently retired and is not a CAIR NO_X Ozone Season opt-in unit shall be exempt from the CAIR NO_X Ozone Season Trading Program, except for the provisions of this section, § 97.302, § 97.303, § 97.304, § 97.306(c)(4) through (7), § 97.307, and subparts BBBB and EEEE through GGGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_X Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR 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 subpart CCCC of this part 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 nitrogen oxides, starting on the date that the exemption takes effect.

(2) The permitting authority will allocate CAIR NO_X Ozone Season allowances under subpart EEEE of this part 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 CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_X Ozone Season 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 CAIR designated representative of the source submits a complete CAIR permit application under § 97.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 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 CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, 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.

§ 97.306 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_X Ozone Season source required to have a title V operating permit and each CAIR NO_X Ozone Season unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.322 in accordance with the deadlines specified in § 97.321; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X Ozone Season source required to have a title V operating permit and each CAIR NO_X Ozone Season unit required to have a title V operating permit at the source shall

have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided under subpart IIII of this part, the owners and operators of a CAIR NO_X Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO_X Ozone Season unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO_X Ozone Season source and such CAIR NO_X Ozone Season unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be used to determine compliance by each CAIR NO_X Ozone Season source with the CAIR NO_X Ozone Season emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides ozone season emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_X Ozone Season allowances available for compliance deductions for the control period under § 97.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.

(2) A CAIR NO_X Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 97.370(b)(1),(2), (3), or (7) and for each control period thereafter.

(3) A CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowance was allocated.

(4) CAIR NO_X Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Ozone Season Allowance Tracking System accounts in accordance with subpart EEEE of this part.

(5) A CAIR NO_X Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Ozone Season Trading Program. No provision of the CAIR NO_X Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.305 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR NO_X Ozone Season allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from a CAIR NO_X Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR NO_X Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_X Ozone Season emissions limitation, then:

(1) The owners and operators of the source and each CAIR NO_X Ozone Season unit at the source shall surrender the CAIR NO_X Ozone Season allowances required for deduction under § 97.354(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

(2) Each ton 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.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season 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 § 97.313 for the CAIR designated representative for the source and each CAIR NO_X Ozone Season 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 § 97.313 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Ozone Season Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Ozone Season Trading Program.

(2) The CAIR designated representative of a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall submit the reports required under the CAIR NO_X Ozone Season Trading Program, including those under subpart HHHH of this part.

(f) *Liability.* (1) Each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit shall meet the requirements of the CAIR NO_X Ozone Season Trading Program.

(2) Any provision of the CAIR NO_X Ozone Season Trading Program that applies to a CAIR NO_X Ozone Season source or the CAIR designated representative of a CAIR NO_X Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_X Ozone Season units at the source.

(3) Any provision of the CAIR NO_X Ozone Season Trading Program that applies to a CAIR NO_X Ozone Season unit or the CAIR designated representative of a CAIR NO_X Ozone Season unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO_X Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X Ozone Season source or CAIR NO_X Ozone Season unit from compliance with any other provision of the applicable, approved State

implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.307 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Ozone Season Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Ozone Season Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.308 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_X Ozone Season Trading Program are set forth in part 78 of this chapter.

Appendix A to Subpart AAAA of Part 97—States with Approved State Implementation Plan Revisions Concerning Applicability

The following States have State Implementation Plan revisions under § 51.123(ee)(1) of this chapter approved by the Administrator and providing for expansion of the applicability provisions to include all non-EGUs subject to the respective State's emission trading program approved under § 51.121(p) of this chapter:

[Reserved]

Subpart BBBB—CAIR Designated Representative for CAIR NO_X Ozone Season Sources

§ 97.310 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.311, each CAIR NO_X Ozone Season source, including all CAIR NO_X Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_X Ozone Season Trading Program concerning the source or any CAIR NO_X Ozone Season unit at the source.

(b) The CAIR designated representative of the CAIR NO_X Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X Ozone Season units at the source and shall act in accordance with the certification statement in § 97.313(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X Ozone Season source represented and each CAIR NO_X Ozone Season unit at the source in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X Ozone Season Allowance Tracking System account will be established for a CAIR NO_X Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 97.313 for a CAIR designated representative of the source and the CAIR NO_X Ozone Season units at the source.

(e)(1) Each submission under the CAIR NO_X Ozone Season Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_X Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.311 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.302, 97.310(a) and (d), 97.312, 97.313, 97.351, and 97.382, whenever the term ''CAIR designated representative'' is used in subparts AAAA through HHHH of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 97.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the

superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit is not included in the list of owners and operators in the certificate of representation under § 97.313, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions 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 CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.313 amending the list of owners and operators to include the change.

§ 97.313 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_X Ozone Season source, and each CAIR NO_X Ozone Season 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 CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_XOzone Season source and of each CAIR NO_X Ozone Season unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) ''I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X Ozone Season unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season unit, or where a customer purchases power from a CAIR NO_X Ozone Season 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 ''CAIR designated representative'' or ''alternate CAIR designated representative'', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X Ozone Season unit at the source; and CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowances by contract, CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.314 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.313 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 § 97.313 is received by the Administrator.

(b) Except as provided in § 97.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Ozone Season Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

Subpart CCCC—Permits

§ 97.320 General CAIR NO_X Ozone Season Trading Program permit requirements.

(a) For each CAIR NO_X Ozone Season source required to have a title V operating permit or required, under subpart IIII of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart IIII of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_X Ozone Season Trading Program, CAIR NO_X Annual Trading Program,

and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.321 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR NO_X Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.322 for the source covering each CAIR NO_X Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_X Ozone Season unit commences operation.

(b) *Duty to reapply.* For a CAIR NO_X Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.322 for the source covering each CAIR NO_X Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 97.322 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_X Ozone Season source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_X Ozone Season source;

(b) Identification of each CAIR NO_X Ozone Season unit at the CAIR NO_X Ozone Season source; and

(c) The standard requirements under § 97.306.

§ 97.323 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.322.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from the compliance account of the CAIR NO_X Ozone Season source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X Ozone Season source's title V operating permit or other federally enforceable permit as applicable.

§ 97.324 CAIR permit revisions.

Except as provided in § 97.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDDD—[Reserved]

Subpart EEEE—CAIR NO_X Ozone Season Allowance Allocations

§ 97.340 State trading budgets.

(a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_X Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,597
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

(b) Upon approval by the Administrator of a State's State implementation plan revision under § 51.123(ee)(1) of this chapter providing for the inclusion in the CAIR NO_X Ozone Season Trading Program of all units that are not otherwise CAIR NO_X Ozone Season units under § 97.304(a) and (b) and that are NO_X Budget units

covered by the State's emissions trading program approved under § 51.121(p), the State's State trading budget shall be treated, for purposes of §§ 97.342 and 97.344, as comprising the sum of:

(1) The applicable amount for the State for the year under paragraph (a) of this section; and

(2) An amount not exceeding the portion of the State's State trading program budget, under such emissions trading program approved under § 51.121(p) of this chapter, attributed to the units that the applicability provisions in § 97.304(a) and (b) are expanded to include under such State implementation plan revision.

§ 97.341 Timing requirements for CAIR NO_X Ozone Season allowance allocations.

(a) The Administrator will determine by order the CAIR NO_X Ozone Season allowance allocations, in accordance with § 97.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_X Ozone Season allowance allocations, in accordance with § 97.342(a) and (b), for the control period in the fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By April 30, 2009 and April 30 of each year thereafter, the Administrator will determine by order the CAIR NO_X Ozone Season allowance allocations, in accordance with § 97.342(a), (c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR NO_X Ozone Season allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.342. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.342.

§ 97.342 CAIR NO_X Ozone Season allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_X Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_X Ozone Season unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 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 follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(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, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_X emissions during a control period in 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 determined based on the best available data reported to the Administrator for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(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, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, 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.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator.

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and will give greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR NO_X Ozone Season units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the State trading budget for such State under § 97.340 (except as provided in paragraphs (d) and (e) of this section).

(2) The Administrator will allocate CAIR NO_X Ozone Season allowances to each CAIR NO_X Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_X Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_X Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_X Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the Administrator will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units in a 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 Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget for the State under § 97.340.

(2) The CAIR designated representative of such a CAIR NO_X Ozone Season unit may submit to the Administrator a request, in a format specified by the the Administrator, to be allocated CAIR NO_X Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section. The CAIR NO_X Ozone Season allowance allocation request must be submitted on or before February 1 before the first control period for which the CAIR NO_X Ozone Season allowances are requested and after the date on which the CAIR NO_X Ozone Season unit commences commercial operation.

(3) In a CAIR NO_X Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding the CAIR NO_X Ozone Season unit's total tons of NO_X emissions during the control period immediately before such control period.

(4) The Administrator will review each CAIR NO_X Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Administrator will determine the sum of the CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season 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 Administrator will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_X Ozone Season 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 Administrator will allocate to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_X Ozone Season 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 Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X Ozone Season allowances (if any) allocated for the control period to the CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR NO_X Ozone Season unit that was allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_X Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_X Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget for such State under § 97.340, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR NO_X Ozone Season allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) or (e) of this section for a control period and that the recipient of the allocation is not actually a CAIR NO_X Ozone Season unit under § 97.304 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR NO_X Ozone Season allowances under § 97.353.

(2) If the Administrator already recorded such CAIR NO_X Ozone Season allowances under § 97.353 and if the Administrator makes such determinations before making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will deduct from the account in which such CAIR NO_X Ozone Season allowances were recorded under § 97.353 an amount of CAIR NO_X Ozone Season allowances allocated for the same or a prior control period equal to the amount of such already recorded CAIR NO_X Ozone Season allowances. The CAIR designated representative shall ensure that there are sufficient CAIR NO_X Ozone Season allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR NO_X Ozone Season allowances under § 97.353 and if the Administrator makes such determinations after making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR NO_X Ozone Season allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR NO_X Ozone Season allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

§ 97.343 Alternative of allocation of CAIR NO_X Ozone Season allowances by permitting authority.

(a) Notwithstanding §§ 97.341, 97.342, and 97.353 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(2) of this chapter providing for allocation of CAIR NO_X Ozone Season allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not

make and record allocations under §§ 97.341, 97.342, and 97.353 for the CAIR NO_X Ozone Season units in the State, and the Administrator will record allocations made under such approved State implementation plan revision.

(b) In implementing paragraph(a) of this section and §§ 97.341, 97.342, and 97.353, the Administrator will ensure that the total amount of CAIR NO_X Ozone Season allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(ee)(2) of this chapter, for a control period for CAIR NO_X Ozone Season sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

The following States have State Implementation Plan revisions under § 51.123(ee)(2) of this chapter approved by the Administrator and providing for allocation of CAIR NO_X Ozone Season allowances by the permitting authority under § 97.344(a):

[Reserved]

Subpart FFFF—CAIR NO_X Ozone Season Allowance Tracking System

§ 97.350 [Reserved]

§ 97.351 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.384(e), upon receipt of a complete certificate of representation under § 97.313, the Administrator will establish a compliance account for the CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR 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 CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X Ozone Season 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 CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with*

ownership interest. (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to CAIR NO_X Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR 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 CAIR NO_X Ozone Season allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_X Ozone Season Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season 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.

§ 97.352 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_X Ozone Season Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X Ozone Season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 97.353 Recordation of CAIR NO_X Ozone Season allowance allocations.

(a) By December 1, 2007, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at a source in accordance with § 97.342(a) and (b) for the control period in 2009.

(b) By December 1, 2008, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in 2010.

(c) By December 1, 2009, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR Ozone Season NO_X allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control periods in 2011, 2012, and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) *Serial numbers for allocated CAIR NO_X Ozone Season allowances.* When recording the allocation of CAIR NO_X Ozone Season allowances for a CAIR NO_X Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_X Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_X Ozone Season allowance is allocated.

§ 97.354 Compliance with CAIR NO_X emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_X Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_X Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowance transfer correctly submitted for recordation under § 97.360 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 § 97.361, of CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_X Ozone Season emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_X Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR NO_X Ozone Season units at the source for the control period; or

(2) If there are insufficient CAIR NO_X Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_X Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_X Ozone Season allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_X Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_X Ozone Season source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_X Ozone Season allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_X Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_X Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_X Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_X Ozone Season source or the CAIR NO_X Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, 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 CAIR NO_X Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_X Ozone Season allowances from or transfer CAIR NO_X Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 97.355 Banking.

(a) CAIR NO_X Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_X Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X Ozone Season allowance is deducted or transferred under § 97.354, § 97.356, or subpart GGGG of this part.

§ 97.356 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_X Ozone Season Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 97.357 Closing of general accounts.

(a) The CAIR 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 § 97.360 for any CAIR NO_X Ozone Season allowances in the account to one or more other CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_X Ozone Season allowances into the account under § 97.360 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGGG—CAIR NO_X Ozone Season Allowance Transfers

§ 97.360 Submission of CAIR NO_X Ozone Season allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_X Ozone Season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_X Ozone Season 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 CAIR NO_X Ozone Season allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 97.361 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_X Ozone Season allowance transfer, the Administrator will record a CAIR NO_X Ozone Season allowance transfer by moving each CAIR NO_X Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.360; and

(2) The transferor account includes each CAIR NOX Ozone Season allowance identified by serial number in the transfer.

(b) A CAIR NO_X Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.354 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_X Ozone Season allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 97.362 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_X Ozone Season allowance transfer under § 97.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_X Ozone Season allowance transfer that fails to meet the requirements of § 97.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_X Ozone Season allowance transfer for recordation following notification of non-recordation.

Subpart HHHH—Monitoring and Reporting

§ 97.370 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_X Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.302 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR NO_X Ozone Season unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 97.302. The owner or operator of a unit that is not a CAIR NO_X Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_X Ozone Season unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR NO_X Ozone Season unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the 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 CAIR NO_X Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

(2) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under § 97.374(d), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) May 1, 2008, if the compliance date under paragraph (b)(2)(i) is before May 1, 2008.

(3) For the owner or operator of a CAIR NO_X Ozone Season unit that commences operation on or after July 1, 2007 and that reports on a control period basis under § 97.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.

(4) For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 97.374(d), 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 or add-on NO_X emissions controls.

(5) For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under § 97.374(d)(2)(ii), by the later of the following dates:

(i) 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 or add-on NO_X emissions controls; or

(ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.

(6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_X Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in § 97.384(b).

(7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a CAIR NO_X Ozone Season opt-in unit under subpart III of this part, by the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 97.384(g).

(c) *Reporting data.* (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR NO_X Ozone Season 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 NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(2) The owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in paragraph (b)(4) 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 § 75.74(c)(7) of this chapter or subpart D or subpart H of, or appendix D or appendix E to, 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)(4) of this section.

(d) *Prohibitions.* (1) No owner or operator of a CAIR NO_X Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.375.

(2) No owner or operator of a CAIR NO_X Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_X Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_X Ozone Season 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 § 97.305 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.371(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_X Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.371 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_X Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.370(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, appendix D, and appendix E 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 § 97.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 97.375 to determine whether the approval applies under the CAIR NO_X Ozone Season Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_X Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.370(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 § 97.370(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 under § 97.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the 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 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. Any fuel flowmeter systems, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 97.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.370(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified,'' and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.373.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator 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 CAIR NO_X Ozone Season Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator 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 Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_X Ozone Season 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 Administrator 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 Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(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 (d)(3)(iv)(B) of this section is met, then the Administrator 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 Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.372(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (i.e., NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) 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.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days

after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator 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.

§ 97.372 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 or subpart H of, or appendix D or appendix E to, 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 § 97.371 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 Administrator 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 Administrator 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 § 97.371 for each disapproved monitoring system.

§ 97.373 Notifications.

The CAIR designated representative for a CAIR NO_X Ozone Season unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.374 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.310(e)(1).

(b) *Monitoring plans.* The owner or operator of a CAIR NO_X Ozone Season unit shall comply with requirements of § 75.73(c) and (e) of this chapter .

(c) *Certification applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.371, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) If the CAIR NO_X Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_X emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_X mass emissions) for such unit for the entire year and shall report the NO_X mass emissions data and heat input data for such 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, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008.

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.370(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008.

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 97.384(b).

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 97.384(g).

(2) If the CAIR NO_X Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_X emissions limitation, then the CAIR designated representative shall either:

(i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or

(ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in § 75.74(c) of this chapter) and report NO_X mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008.

(B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.370(b), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date.

(iii) Notwithstanding paragraphs (d)(2)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart

IIII of this part, the calendar quarter corresponding to the date specified in § 97.384(b).

(iv) Notwithstanding paragraphs (d)(2)(i) and (ii) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 97.384(g).

(3) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CAIR NO_X Ozone Season 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 Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_X emission rate and NO_X concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_X emissions.

§ 97.375 Petitions.

The CAIR designated representative of a CAIR NO_X Ozone Season unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

§ 97.376 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_X Ozone Season unit that monitors and reports NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart IIII—CAIR NO_X Ozone Season Opt-in Units

§ 97.380 Applicability.

A CAIR NO_X Ozone Season opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter establishing procedures concerning CAIR Ozone Season opt-in units;

(b) Is not a CAIR NO_X Ozone Season unit under § 97.304 and is not covered by a retired unit exemption under § 97.305 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 97.381 General.

(a) Except as otherwise provided in §§ 97.301 through 97.304, §§ 97.306 through 97.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_X Ozone Season opt-in unit shall be treated as a CAIR NO_X Ozone Season unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_X Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

§ 97.382 CAIR designated representative.

Any CAIR NO_X Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_X Ozone Season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_X Ozone Season units.

§ 97.383 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X Ozone Season opt-in unit in § 97.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.386(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.322;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_X Ozone Season unit under § 97.304 and is not covered by a retired unit exemption under § 97.305 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack, and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.322;

(3) A monitoring plan in accordance with subpart HHHH of this part;

(4) A complete certificate of representation under § 97.313 consistent with § 97.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X Ozone Season allowances under § 97.380(b) or § 97.388(c) (subject to the conditions in §§ 97.384(h) and 97.386(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance

with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR NO_X Ozone Season opt-in unit shall submit a complete CAIR permit application under § 97.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_X Ozone Season opt-in unit from the CAIR NO_X Ozone Season Trading Program in accordance with § 97.386 or the unit becomes a CAIR NO_X Ozone Season unit under § 97.304, the CAIR NO_X Ozone Season opt-in unit shall remain subject to the requirements for a CAIR NO_X Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR NO_X Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.383 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determines that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 97.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X Ozone Season Trading Program in accordance with § 97.386.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.

(d) *Baseline NO_X emission rate.* The unit's baseline NO_X emission rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_X emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_X emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in § 97.380 and meets the elements certified in § 97.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_X Ozone Season opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in § 97.380 or meets the elements certified in § 97.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR NO_X Ozone Season Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_X Ozone Season opt-in unit, and a CAIR NO_X Ozone Season unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR NO_X Ozone Season opt-in unit.* (1) If CAIR designated representative requests, and

the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under § 97.388(c) and such unit is repowered after its date of entry into the CAIR NO_X Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_X Ozone Season opt-in unit replacing the original CAIR NO_X Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR NO_X Ozone Season opt-in unit, and the original CAIR NO_X Ozone Season opt-in unit shall no longer be treated as a CAIR NO_X Ozone Season opt-in unit or a CAIR NO_X Ozone Season unit.

§ 97.385 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.322;

(2) The certification in § 97.383(a)(2);

(3) The unit's baseline heat input under § 97.384(c);

(4) The unit's baseline NO_X emission rate under § 97.384(d);

(5) A statement whether the unit is to be allocated CAIR NO_X Ozone Season allowances under § 97.380(b) or § 97.388(c) (subject to the conditions in §§ 97.384(h) and 97.386(g));

(6) A statement that the unit may withdraw from the CAIR NO_X Ozone Season Trading Program only in accordance with § 97.386; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.387.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_X Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_X Ozone Season opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format prescribed by the permitting authority, in the CAIR permit for the source where the CAIR NO_X Ozone Season opt-in unit is located.

§ 97.386 Withdrawal from CAIR NO_X Ozone Season Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_X Ozone Season opt-in unit may withdraw from the CAIR NO_X Ozone Season Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR NO_X Ozone Season opt-in unit from the CAIR NO_X Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR NO_X Ozone Season Trading Program under § 97.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR NO_X Ozone Season opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_X Ozone Season Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X Ozone Season opt-in unit must meet the requirement to hold CAIR NO_X Ozone Season allowances under § 97.306(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit CAIR NO_X Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 97.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_X Ozone Season opt-in unit may submit a CAIR NO_X Ozone Season allowance transfer for any remaining CAIR NO_X Ozone Season allowances to another CAIR NO_X Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_X Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit that the CAIR NO_X Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_X Ozone Season opt-in unit shall continue to be a CAIR NO_X Ozone Season opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_X Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_X Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_X Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR NO_X Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR NO_X Ozone Season Trading Program.* Once a CAIR NO_X Ozone Season opt-in unit withdraws from the CAIR NO_X Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated

representative may not submit another application for a CAIR opt-in permit under § 97.383 for such CAIR NO_X Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.384.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_X Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_X Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit requests, and the permitting authority issues a CAIR NO_X opt-in permit providing for, allocation to the CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under § 97.388(c).

§ 97.387 Change in regulatory status.

(a) *Notification.* If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_X Ozone Season opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, the permitting authority will revise the CAIR NO_X Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.323 as of the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit that becomes a CAIR NO_X Ozone Season unit under § 97.304, CAIR NO_X Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 97.388 for any control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304; and

(B) If the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304 is not December 31, the CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 97.388 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X Ozone Season unit that becomes a CAIR NO_X Ozone Season unit under § 97.304 contains the CAIR NO_X Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, the CAIR NO_X Ozone Season opt-in unit will be treated, solely for purposes of CAIR NO_X Ozone Season allowance allocations under § 97.342, as a unit that commences operation on the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304 and will be allocated CAIR NO_X Ozone Season allowances under § 97.342.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304 is not January 1, the following amount of CAIR NO_X Ozone Season allowances will be allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under § 97.342 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304:

(A) The amount of CAIR NO_X Ozone Season allowances otherwise allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under § 97.342 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 97.388 CAIR NO_X Ozone Season allowance allocations to CAIR NO_X Ozone Season opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.384(e), the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X Ozone Season opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocation will be the lesser of:

(i) The CAIR NO_X Ozone Season opt-in unit's baseline heat input determined under § 97.384(c); or

(ii) The CAIR NO_X Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g).

(2) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X allowance allocations will be the lesser of:

(i) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.384(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period for which CAIR NO_X Ozone Season allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_X emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under this paragraph (subject to the conditions in §§ 97.384(h) and 97.386(g)), the permitting authority will allocate to the CAIR NO_X Ozone Season opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be the lesser of:

(A) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(B) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g).

(iii) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(C) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period for which CAIR NO_X Ozone Season allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under paragraph (a)(2) of this section.

Appendix A to Subpart IIII of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Ozone Season Opt-IN Units

1. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_X Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR NO_X Ozone Season allowances to such units under § 97.388(b):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_X Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR NO_X Ozone Season allowances to such units under § 97.388(c):

[Reserved]

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August 24, 2005

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2005; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7958–2]

RIN 2060–AM50

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2005. Essential use allowances enable a person to obtain controlled class I ODSs as an exemption to the regulatory ban of production and import of these chemicals, which became effective on January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. The allocations total 1,820.48 metric tons of chlorofluorocarbons for use in metered dose inhalers.

DATES: This final rule is effective August 19, 2005.

ADDRESSES: Materials related to this rulemaking are contained in EPA Air Docket OAR–2004–0063. The EPA Air Docket is located at EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. The Air Docket is open from 8:30 a.m. until 4:30 p.m. Monday through Friday. Materials related to previous EPA actions on the essential use program are contained in EPA Air Docket No. A–93–39.

FOR FURTHER INFORMATION CONTACT: Hodayah Finman by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; by telephone: 202–343–9246; by fax: 202–343–2338; or by email: *finman.hodayah@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. General Information

How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action at Air Docket ID No. OAR–2004–0063. The official public docket consists of the documents specifically referenced in this action and other information related to this action. Hard copies of documents related to previous essential use allocation rulemakings and other actions may be found in EPA Air Docket ID No. A–93–39. The public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The public docket is available for viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1741, and the telephone number for the Air and Radiation Docket is (202) 566–1742. EPA may charge a reasonable fee for copying docket materials.

2. Electronic Access

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 view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

II. Basis for Allocating Essential Use Allowances

A. What Are Essential Use Allowances?

Essential use allowances are allowances to produce or import certain ozone-depleting chemicals in the U.S. for purposes that have been deemed ''essential'' by the Parties to the Montreal Protocol and the U.S. Government.

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is an international agreement aimed at reducing and eliminating the production and consumption [1] of stratospheric ozone depleting substances (ODSs). The elimination of production and consumption of class I ODSs is accomplished through adherence to phaseout schedules for specific class I ODSs,[2] including: chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Protocol and the Clean Air Act (Act) provide exemptions that allow for the continued import and/or production of class I ODS for specific uses. Under the Protocol, exemptions may be granted for uses that are determined by the Parties to be ''essential.'' Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* section 601(6) of the Clean Air Act).

[2] Class I ozone depleting substances are listed at 40 CFR part 82, subpart A, appendix A.

approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

''(a) That a use of a controlled substance should qualify as 'essential' only if:

(i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) That production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) The controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances.''

B. Under What Authority Does EPA Allocate Essential Use Allowances?

Title VI of the Act implements the Protocol for the United States. Section 604(d) of the Act authorizes EPA to allow the production of limited quantities of class I ODSs after the phase out date for the following essential uses:

(1) Methyl Chloroform, ''solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available.'' Under the Act, this exemption was available only until January 1, 2005. Prior to that date, EPA issued methyl chloroform allowances to the U.S. Space Shuttle and Titan Rocket programs.

(2) Medical Devices (as defined in section 601(8) of the Act), ''if such authorization is determined by the Commissioner [of the Food and Drug Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices.'' EPA issues allowances to manufacturers of metered-dose inhalers (MDIs), which use CFCs as propellant for the treatment of asthma and chronic obstructive pulmonary diseases.

(3) Aviation Safety, for which limited quantities of halon-1211, halon-1301, and halon 2402 may be produced ''if the Administrator of the Federal Aviation Administration, in consultation with the Administrator [of EPA] determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.'' Neither EPA nor the Parties have ever granted a request for essential use allowances for halon, because in most cases alternatives are available and because existing quantities of this substance are large enough to provide for any needs for which alternatives have not yet been developed.

The Protocol, under Decision XV/8, additionally allows a general exemption for laboratory and analytical uses through December 31, 2007. This exemption is reflected in EPA's regulations at 40 CFR part 82, subpart A. While the Act does not specifically provide for this exemption, EPA has determined that an allowance for essential laboratory and analytical uses is allowable under the Act as a *de minimis* exemption. The *de minimis* exemption is addressed in EPA's final rule of March 13, 2001 (66 FR 14760–14770). The Parties to the Protocol subsequently agreed (Decision XI/15) that the general exemption does not apply to the following uses: testing of oil and grease, and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exclusion at appendix G to subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352).

C. What Is the Process for Allocating Essential Use Allowances?

Before EPA will allocate essential use allowances, the Parties to the Protocol must first approve the United States' request to produce or import essential class I ODSs. The procedure set out by Decision IV/25 calls for individual Parties to nominate essential uses and the total amount of ODSs needed for those essential uses on an annual basis. The Protocol's Technology and Economic Assessment Panel (TEAP) evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on whether to approve a Party's essential use nomination at their annual meeting. This nomination cycle occurs approximately two years before the year in which the allowances would be in effect. The allowances allocated through today's action were first nominated by the United States in January 2003.

Once the U.S. nomination is approved by the Parties, EPA allocates essential use exemptions to specific entities through notice-and-comment rulemaking in a manner consistent with the Act. For MDIs, EPA requests information from manufacturers about the number and type of MDIs they plan to produce, as well as the amount of CFCs necessary for production. EPA then forwards the information to the Food and Drug Administration (FDA), which determines the amount of CFCs necessary for MDIs in the coming calendar year. Based on FDA's determination, EPA proposes allocations to each eligible entity. Under the Act and the Protocol, EPA may allocate essential use allowances in quantities that together are below or equal to the total amount approved by the Parties. EPA will not allocate essential use allowances in amounts higher than the total approved by the Parties. For 2005, the Parties authorized the United States to allocate up to 1,902 metric tons of CFCs for essential uses.

EPA published a proposed rule on December 22, 2004 (69 FR 76655) that would have allocated a total of 1,524.58 metric tons of allowances. EPA subsequently determined that the amount proposed to be allocated to one company, Armstrong Pharmaceuticals, was incorrect. Specifically, EPA had proposed to allocate to Armstrong 29 metric tons, but the amount should have been 270.90 metric tons. EPA published a supplemental proposal on February 23, 2005 (70 FR 8753) to correct the error, which increased the total amount of proposed allowances to 1,766.48 metric tons. Today's rule finalizes both the proposed rule and the supplemental proposed rule.

III. Response to Comments

EPA received eight sets of comments from six individual commenters on the proposed rule and the supplemental proposed rule, four of which were late comments. One commenter objected to the granting of essential use status generally. One commenter requested additional allowances for 2005. The other four commenters presented arguments related to the obligations of the United States under the Montreal Protocol and the requirements of the Clean Air Act with respect to the proposed allocations. The comments are addressed in more detail below.

A. EPA Should Not Allocate Essential Use Allowances Generally

One commenter opposed exempting Class I substances for any purpose, including asthma medication, because non-ozone depleting alternatives have been developed (OAR–2004–0063–0006). EPA disagrees with this comment. Section 604 of the Act directs

EPA to authorize production of CFCs for essential MDIs if FDA, in consultation with EPA, determines such production to be necessary. FDA has found the use of ozone-depleting substances to be essential in certain metered dose inhalers for the treatment of asthma and chronic pulmonary disease (see 21 CFR 2.125(e)). As established by final rule on July 24, 2002 (67 FR 48370), FDA will determine through rulemaking when an MDI is no longer essential due to the availability of safe and effective alternatives.

The same commenter also stated, ''[A]ll of the information these polluting companies submit should be open to the public.'' The information submitted was claimed as confidential. That information is being treated in accordance with EPA's regulations on confidential business information at 40 CFR 2.201 through 2.311.

B. EPA Should Not Allocate Essential Use Allowances for Production of Albuterol MDIs

One commenter wrote that EPA should not allocate essential use allowances for use in CFC albuterol MDIs because they are ''non-essential'' and the allocations would be ''inconsistent with Decisions of the Parties to the Montreal Protocol'' (OAR–2004–0063–0012). The commenter referenced a letter sent by the Natural Resources Defense Council (NRDC) to EPA on May 13, 2004, that addressed the inclusion of CFCs for albuterol MDIs in the United States' 2006 essential use nomination. EPA responded with a letter dated July 12, 2004, in which we said, ''Until FDA issues a final rule to delist albuterol MDIs (with an identified effective date) in accordance with its own regulations and the Administrative Procedures Act, it is premature and contrary to law for EPA unilaterally to conclude that CFC albuterol MDIs are in fact no longer essential in the United States and to remove this essential use from the U.S. nomination for 2006.'' These letters have been placed in EPA Docket no. OAR–2004–0063. FDA since announced its decision that CFC albuterol MDIs will no longer be essential after December 31, 2008 (70 FR 17168, April 4, 2005). Thus, FDA continues to regard CFC albuterol MDIs as essential for the current control period. EPA is therefore allocating essential use allowances for CFC albuterol MDIs in this final rule.

C. Aventis Pharmaceuticals Requested Additional CFCs for 2005

Aventis Pharmaceuticals submitted to the docket a request for additional allowances in the amount of 60 metric tons, which if allocated would bring the company's total allocation for 2005 to 117 metric tons. A portion of the additional CFCs would be used for products exported outside the United States. EPA and FDA considered this request and determined to grant additional allowances for MDI products marketed in the United States; the relevant correspondence has been placed in EPA Docket no. OAR–2004–0063.

EPA is not granting additional allowances to Aventis for production of CFC MDIs that would be sold outside the United States. Under section 604(d)(2) of the Act, EPA authorizes production of class I substances ''if such authorization is determined by the Commissioner in consultation with the Administrator, to be necessary for use in medical devices.'' EPA and FDA have concluded that they currently lack sufficient information about whether the MDIs in question have been declared essential in those counties by their public health authority, whether they could otherwise be considered essential, or whether production of CFCs for these MDIs is necessary. FDA is thus unable to render a determination on those issues. Without such determinations, EPA is not allocating allowances for those MDIs.

Following publication of the proposed rule in the **Federal Register** and the request by Aventis for increased allowances, EPA was notified that Aventis sold certain of its assets related to MDI production to Inyx USA. Therefore, today's action assigns the allowances proposed for Aventis, including the additional allowances, to Inyx.

EPA received separate but similar sets of comments from the International Pharmaceutical Aerosol Consortium (IPAC), NRDC, the U.S. Stakeholders Group on MDI Transition, and GlaxoSmithKline (GSK), a pharmaceutical company and member of IPAC. EPA's responses to these comments are grouped below in accordance with the major points made by the commenters. In many instances EPA references the GSK comments because they were both representative of and more detailed than other comments.

D. Effect of Montreal Protocol Decisions

GSK commented that ''EPA's statutory obligation to fully implement the provisions of the Montreal Protocol includes decisions by the Parties to the Protocol'' (OAR–2004–0063–0008, p. 2). EPA previously discussed the relevance of Decisions of the Parties 69 FR 76984–76985. Today's action is fully consistent with the Montreal Protocol and the Decisions of the Parties bolster, rather than detract from, EPA's interpretation and application of the Protocol's essential use provisions.

E. EPA Must Reevaluate FDA's Determinations Regarding Essential Use Allowance Volumes

GSK argued that EPA must adhere to Montreal Protocol Decisions and commented, ''The fact that FDA has recommended [certain allocation] levels does not absolve EPA from evaluating consistency with Protocol decisions at the time it makes * * * allocations'' (OAR–2004–0063–0008, p. 3). GSK also argued that EPA may not rely on the levels authorized by the Parties to the Protocol, but must reapply relevant Decisions in its rulemaking process to ensure consistency with the Protocol.

EPA understands today's rulemaking to be fully consistent with the relevant Protocol Decisions and with its obligations under the Protocol and Federal law. As explained elsewhere in this section of the preamble, most of the Decisions cited by GSK specifically reference the nomination process, not the allocation process. EPA accordingly reviews those Decisions in preparing the nomination.

F. EPA May Not Allocate Allowances to Companies That Fail To Demonstrate Research and Development of Alternatives

GSK argued that Decisions VIII/10, XV/5, and IV/25 require EPA to deny allowances to companies that did not submit research and development information. GSK stated that it is ''highly likely'' that not all companies that requested allowances have submitted such information, and suggested that the U.S. nomination may have been non-responsive on this point (OAR–2004–0063–0008, p. 8).

EPA disagrees with the commenter's interpretation of Decision VIII/10 and its effort to establish links between this Decision and others. Decision VIII/10 provides that Parties ''will request companies applying for MDI essential-use exemptions to demonstrate ongoing research and development of alternatives to CFC MDIs with all due diligence'' as well as to report in confidence on resources and progress in alternatives development. In accordance with this Decision, since 1997 EPA has requested applicants to provide this information when submitting requests for CFC essential use nominations. (67 FR 66148, October 30, 2002). Thus, EPA's interpretation is consistent with this Decision.

Contrary to GSK's suggestion, Decision VIII/10 does not require any

action to be taken at the allocation stage. Instead, it states only that Parties ''will request'' information on research and development from companies. In addition, Decision VIII/10 does not state how to use the information. It does not require the United States to report to the Parties on research and development, either in connection with essential use nominations or otherwise. Nor does it serve as a basis for denying an essential use allowance request. See, for example, 67 FR 6355, February 11, 2002.

GSK commented that EPA should not allocate allowances to companies that do not plan to replace their CFC MDI product with a non-CFC alternative and are not conducting research to develop new products (OAR–2004–0063–0008, p. 9). Decision VIII/10, however, does not say that all applicants must demonstrate ongoing research and development, regardless of the circumstances. EPA interprets the Parties' intent in taking Decision VIII/10 to be, as stated on its face, ''to promote industry's participation on a smooth and efficient transition away from CFC based MDIs'' generally. Granting allowances for a CFC MDI product, if the product is listed as essential and production of CFCs is determined by the Commissioner of FDA to be necessary under section 604(d)(2) of the Act, allows industry and patients to continue to make and use needed products while non-CFC alternatives are developed. This is consistent with the Decision VIII/10 standard of ''due diligence.''

Companies may elect to drop their CFC products and withdraw from the essential use program over time in accordance with their business plans. EPA has seen at least two instances in which companies—Sciarra Laboratories and PLIVA—withdrew from the essential use program (by no longer requesting essential use allowances) without ultimately reformulating their products in a non-CFC version, leaving the need for their products to be filled by other essential MDIs or alternatives. This process is consistent with the goal of promoting a ''smooth and efficient transition.'' EPA has placed in Docket no. OAR–2004–0063 **Federal Register** notices from 2001 and 2002 indicating Sciarra's withdrawal from the program, as well as the **Federal Register** notice from 2004 indicating the last year in which PLIVA received allowances (PLIVA is not included in today's rule). Additionally, EPA has docketed the U.S. response to Decision XIV/5, sent to the Ozone Secretariat on February 23, 2005, in which the U.S. identified all CFC and non-CFC inhalers sold domestically.

GSK stated that ''it is not reasonable to conclude that because a parent company has presented information to demonstrate its compliance with Decision VIII/10, that such compliance automatically applies to that company's subsidiaries. * * * EPA has not provided any information by which the public can reasonably conclude that Schering-Plough has shared the fruits of [its] collaboration with its subsidiary, Warrick Pharmaceuticals'' (OAR–2004–0063–0008, p. 11). GSK also stated that EPA must deny allocations to Schering for Warrick's product based on Schering's alleged failure to submit information on Warrick's research and development efforts. However, as noted above, Decision VIII/10 calls for countries to request information from companies regarding research and development, and does not speak to the issue of denying petitions. Furthermore, the decision does not indicate whether the Parties had any specific intent regarding parent-subsidiary collaborations. Given the underlying purpose of the Decision to encourage research and development by the industry as a whole and the lack of formal corporate distinctions in the Protocol, EPA disagrees with GSK's construction.

GSK also incorrectly concludes that Decision XV/5 establishes that ''EPA * * * allocations must be assessed for each active ingredient and each intended market'' (OAR–2004–0063–0008, p. 10). In Decision XV/5, the Parties agreed: ''To request that Parties * * * when submitting their nominations for essential-use exemptions for CFCs for metered-dose inhalers, specify, for each nominated use, the active ingredients, the intended market for sale or distribution and the quantity of CFCs required.'' Decision XV/5(2). This Decision refers specifically to the nomination process. It does not address research and development reporting, nor does it affect EPA's authority with regard to the granting of essential use allowances on that ground.

Finally, GSK's citation of Decision IV/25 is also inapposite. GSK stated that if a company's efforts to research and develop alternatives, to collaborate with others, and to share such information with its subsidiaries are ''insufficient,'' then it has not taken ''all economically feasible steps * * * to minimize the essential use'' in accordance with Decision IV/25(1)(b)(i) (OAR–2004–0063–0008, pp. 10–11). EPA disagrees with the commenter's suggestion of a direct relationship between Decisions IV/25 and VIII/10. Decision VIII/10 does not make reference to Decision IV/25. Also, GSK's proposed construction is unreasonable due to the practical difficulties associated with determining whether an individual company's research and development efforts constitute ''all economically feasible steps'' for that company. Such a determination could require detailed knowledge of the company's financial status and business plans, as well as an understanding of the economic importance of the company's MDI products relative to other products manufactured by the company.

Moreover, Paragraph 1(b)(i) of Decision IV/25 speaks to minimization of particular essential uses, not to general research and development. EPA has received information from applicants regarding their efforts to minimize the essential use and associated emissions. The United States reports to the Parties on these efforts in the annual essential use nomination. The essential use nomination for 2005 (pp. 12–13), for example, listed several waste minimization strategies employed in the manufacture of MDIs (see Docket OAR–2004–0063). Information submitted by individual companies in connection with annual essential use nominations has been claimed as confidential and is being treated in accordance with EPA's regulations on confidential business information a 40 CFR 2.201 through 2.311.

G. EPA Must Reduce Allocations of Essential Use Allowances by the Amount That CFC Stockpiles Exceed a One-Year Supply

Commenters argued that because Decision XVI/12 states that countries should pursue ''the objective of maintaining no more than one year's operational supply [of CFCs],'' and because Decision IV/25 states that production and consumption should be permitted only if ''the controlled substance is not available in sufficient quantity and quality from existing stocks,'' that EPA must reduce allocations if stockpiles of CFCs amount to more than a one-year supply. GSK also argued that section 604(d)(2) of the Clean Air Act reinforces this requirement by allowing the Administrator to authorize new production of class I substances for medical devices only if ''such action is consistent with the Montreal Protocol'' (OAR–2004–0063–0008, p. 13).

EPA believes that this argument misreads the Decisions in question and that today's action is fully consistent with those Decisions and the Protocol. At the last Meeting of the Parties in November 2004, the Parties specifically negotiated and addressed in text the issue of stockpiles for CFC MDIs. They concluded in Decision XVI/12 that

''Parties, when preparing essential use nominations for CFCs, should give due consideration to existing stocks * * * with the objective of maintaining no more than one year's operational supply.'' First, by its very terms, the Decision only applies prospectively, when countries make a nomination, not during any later domestic allocation process.

Second, Decision XVI/12 did not exist at the time of the 2005 U.S. nomination. The first nomination subject to Decision XVI/12, which the United States delivered to the Parties on February 2, 2005, stated, ''The USEPA monitors reserves through information provided by companies that receive essential use allowances. In putting forward our 2007 essential use exemption nomination, the United States carefully reviewed the size of company reserves, bearing in mind that information on reserves at the end of 2003 or 2004 is not a reliable indicator of the amounts that will be held, and their distribution at the beginning of 2007. Bearing in mind this uncertainty, the United States has given due consideration to the existence of stocks in accordance with Decision XVI/12'' (p. 16). Thus, the United States has acted in conformance with Decision XVI/12.

Third, Decision XVI/12 only sets an objective of a one-year operational supply. It does not establish an absolute limitation. Giving ''due consideration'' to the level of stocks at the time of nomination does not necessarily equate to adjusting the U.S. nomination if the stockpile data at that point in time indicate a supply greater than one year's worth. The commenters cited data regarding on-hand CFC supplies at the beginning of 2004. To the extent the commenters' concern is based on this data, EPA directs their attention to the more recent report filed with the Ozone Secretariat on February 23, 2005 (see Docket No. OAR–2004–0063).

GSK noted that Decision XVI/2 expressly references Decision IV/25. However, Decision IV/25 does not alter the plain meaning of Decision XVI/12, and indeed it could not, having been decided by the Parties twelve years before they decided Decision XVI/12. GSK also stated that Decision IV/25 independently requires EPA to reduce allocations to the extent that stockpiles are ''excessive.'' This statement assumes that the Decision's language could only apply to individual Parties, ignores its hortatory nature, and overlooks the fact that the Parties specifically chose, in Decision XVI/12, to address the stockpile topic by setting an ''objective'' and by referring to the nomination, not to any domestic allocation process.

GSK also referred to Decision XV/5(2), in which the Parties decided, among other things, ''[t]o request that Parties * * * when submitting their nominations for essential-use exemptions for CFCs for metered-dose inhalers, specify, for each nominated use, the active ingredients * * * and the quantity of CFCs required.'' GSK stated that the combined effect of Decisions IV/25 and XV/5 is that EPA must, ''[i]n most cases * * * assess stockpiles on a company-specific basis'' (OAR–2004–0063–0008, p. 13). As a consequence, GSK argued, EPA must consider both available stockpiles in the aggregate and as held by individual companies. If a single company holds stockpiles greater than one year's operational supply, then according to the commenter EPA must reduce the amount of that company's allocation.

GSK has incorrectly interpreted a Decision that explicitly refers to individual Parties' nominations as referring to individual Parties' licensing processes. The United States acted in accordance with Decision XV/5, which was taken in November 2003, by submitting the requested information in a letter to the TEAP co-chairs (dated April 21, 2004) in connection with the 2006 essential use nomination. The United States also sent updated information to the TEAP co-chairs on February 23, 2005, in connection with the 2007 essential use nomination. Decision XV/5, whether considered alone or together with Decision IV/25, does not require the United States to take any action other than to submit the requested information as part of its essential use nomination. GSK did not explain the assertion that the two Decisions, taken together, provide more direction than either provides on its face, nor is there any indication of a direct relationship between the two Decisions. Decision XV/5 does not make reference to Decision IV/25. Furthermore, the U.S. nomination for 2005 had already been submitted at the time the Parties took Decision XV/5 and thus Decision XV/5 did not apply to that nomination because it post-dated it.

Another commenter quoted the May 2004 TEAP Report (see Docket no. OAR–2004–0063) to the effect that ''individual companies may hold a substantial and, perhaps, disproportionate amount'' of a Party's stockpile (OAR–2004–0063–0011, p. 2). EPA does not agree with this commenter that the statements in the TEAP report—a document that has never been formally adopted by the United States—regarding individual holdings mean that Decision XVI/12 must or should be read as relating to individual holdings. The TEAP only serves as an advisory body to the Parties to inform their decision making. It is not a directive body. Moreover, the natural reading of Decision XVI/12 is that each Party's objective should be to maintain no more than one year's (aggregate) supply. Paragraph 3 of that Decision states that ''Parties * * * should give due consideration to existing stocks * * * with the objective of maintaining no more than one year's operational supply.'' The ''Parties'' are the subject of the sentence and are thus the entities to which the phrase ''objective of maintaining no more than one year's operational supply'' pertains.

H. EPA Must Comply With the Act's Requirements for Notice and Comment Rulemaking

GSK stated that EPA, in our supplemental proposal to correct Armstrong's allocation, failed to comply with section 307(d) of the Act. Section 307(d)(3) directs EPA to make available, among other items, the factual data on which a proposed rule is based and the methodology used in obtaining and analyzing those data. GSK stated that the supplemental proposal was based on information that had not been placed in the docket, and also that the supplemental proposal was not justified based on information that EPA had made public. GSK also stated, ''Even if it were correct that a requesting company has sufficient information to comment on its own proposed allocation, neither EPA nor FDA have [sic] provided any basis for a different interested party to meaningfully comment on that allocation'' (OAR–2004–0063–0016, p. 3).

As stated above, the information on which FDA, in consultation with EPA, based the proposed allocations was claimed confidential by the submitting companies, including Armstrong Pharmaceuticals. As a consequence, EPA has treated this information in accordance with our regulations on confidential business information at 40 CFR 2.201 through 2.311. EPA has entered placeholder documents in the public portion of the docket to indicate the documents that we placed in the confidential portion.

With respect to the methodology used to determine the proposed allocations, EPA described the process for allocating essential use allowances in the preamble to the proposed rule published on December 22, 2004 (69 FR 76657). Section 604(d)(2) of the Act directs the Agency to authorize production of class I substances ''if such authorization is determined by the Commissioner, in consultation with the

Administrator, to be necessary for use in medical devices.'' EPA entered the Acting Commissioner's letter of determination (OAR–2004–0063–0005), as well as the FDA's subsequent letter of correction (OAR–2004–0063–0010), into the public docket for comment. EPA also explained in the preamble of the supplemental proposal that the allocation originally proposed for Armstrong Pharmaceuticals was based on an error, and the purpose of the supplemental notice was to correct the error. Portions of the correspondence regarding the nature of the error have been placed in the confidential portion of the docket due to concerns regarding disclosure of information claimed as confidential. A placeholder has been entered in the public portion of the docket with respect to this information.

EPA thus has made public the most information possible given our obligations regarding the treatment of information claimed as confidential. Therefore, EPA has acted in accordance with section 307(d) of the Act with respect to making public the basis and methodology for our proposed allocations. EPA has also acted in accordance with section 604(d)(2) of the Act. EPA does not have discretion to refuse to authorize production that is consistent with the Montreal Protocol and that has been determined to be necessary by FDA in consultation with EPA.

I. The Increase in Armstrong's Proposed Allocation Was Not Supported by Publicly Available Information

GSK stated that the corrected allocation proposed for Armstrong Pharmaceuticals in the supplemental notice was too high and ''cannot be supported under the CAA or the Montreal Protocol'' (OAR–2004–0063–0016, p. 6). This commenter argued that Armstrong's actual MDI production in recent years, according to publicly available data, was far less than would warrant the amount of CFC production allowances that Armstrong would receive according to the supplemental proposed rule. Also, GSK stated that Armstrong ''must be holding huge stockpiles of CFCs—at least sufficient to supply its production for more than a year,'' and that by allocating additional allowances to Armstrong in 2005 EPA would violate the terms of the Montreal Protocol (OAR–2004–0063–0016, p. 5).

Because Armstrong has claimed its 2005 essential use allowance documentation as confidential, EPA is unable to respond to the points made by the commenter specifically with regard to Armstrong's proposed allocation. However, GSK made several assumptions that EPA may respond to in general terms. First, GSK assumed that a company uses all of the allowances it is allocated in a given year. This is not the case, as evidenced by the U.S. Accounting Framework, which since 2001 has shown that the amount authorized has consistently exceeded the amount actually acquired (Accounting Frameworks for 2001–2004 have been placed in Docket no. OAR–2004–0063). In the 2004 Accounting Framework, for example, the United States reported 964 metric tons of CFCs authorized but not acquired. This fact reflects an important aspect of the essential use program: Both the U.S. nomination and the subsequent allocation rule issued for a given year involve projections, and there is unavoidably some uncertainty associated with projections of demand for CFC MDIs. In the interest of ensuring public access to essential MDIs, EPA believes it is safer for public health to risk allocating more allowances than may be used than to allocate too few and risk a shortage.

Second, GSK assumed that a company would be able to generate a large stockpile of essential use CFCs by using all of its allowances to produce or import CFCs without actually using those CFCs to manufacture MDIs during the same control period. However, a company engaging in this practice would reveal itself in its reporting to EPA in accordance with regulations at 40 CFR 82.13(u). EPA's examination of the data from this reporting has led it to conclude that stocks are on a downward trend in recent years. EPA expects companies to manage their allowances in good faith consistent with the goals of the essential use program.

The proposition that any company has accrued stores of essential use CFCs many times in excess of its annual usage is contradicted by the Accounting Framework. Since 2001, the amount of CFCs that the United States reported to the Ozone Secretariat as on-hand at the end of the year (Column L of the Accounting Framework) has decreased every year, from 1,910 metric tons in 2001 to 1,521 metric tons in 2004. Excessive stockpiling of CFCs by one or more companies would be reflected in the Accounting Framework as an increase in on-hand CFCs.

Third, the commenter assumed that a company's allocations must be based on the company's prior record of production. If a company's projected need for CFCs is higher than past usage, the commenter suggests, then EPA should not authorize additional CFCs. It is true that a company's prior usage of CFCs is relevant to EPA's proposed allocations, which is why EPA's February 24, 2004, letter to MDI manufacturers required them to include in their essential use applications prior-year production data (OAR–2004–0063–0002). Nevertheless, past production alone is an insufficient basis for allocating allowances in light of the fact that market conditions may change, and a company may increase or decrease its levels of production accordingly. Thus, EPA's February 24, 2004, letter also requested information regarding anticipated needs during 2005. For this reason and the other reasons explained above, EPA disagrees with the conclusions reached by the commenter with regard to the proposed allocation for Armstrong.

IV. Allocation of Essential Use Allowances for Calendar Year 2005

With today's action, EPA is allocating essential use allowances for calendar year 2005 to the entities listed in Table 1. These allowances are for the production or import of the specified quantity of class I controlled substances solely for the specified essential use.

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2005

Company	Chemical	Quantity (metric tons)
Metered Dose Inhalers (for Oral Inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	270.90
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	480
Inyx USA, Ltd.[3]	CFC–11 or CFC–12 or CFC–114	111
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	816
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	69.18

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2005—Continued

Company	Chemical	Quantity (metric tons)
Wyeth Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	73.40

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this regulatory action is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, this action was submitted to OMB for Executive Order 12866 review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Under section 6(a)(3)(B)(ii) of Executive Order 12866, the Agency must provide to OMB's Office of Information and Regulatory Affairs an ''assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.''

[3] As explained in section III.C of the preamble, allowances allocated to Aventis in the proposed rule are being allocated to Inyx in today's final rule.

EPA is undertaking today's final action under the mandate established by section 604(d) of the Clean Air Act Amendments of 1990, which directs the Administrator to authorize the production of limited quantities of class I substances solely for use in medical devices, if the Commissioner of FDA determines that the authorization is necessary. The final allocations in today's rule are the amounts determined by FDA to be necessary for calendar year 2005.

EPA has not assessed the costs and benefits specific to today's final action. The Agency examined the costs and benefits associated with a related regulation. The Agency's Regulatory Impact Analysis (RIA) for the entire Title VI phaseout program examined the projected economic costs of a complete phaseout of consumption of ozone-depleting substances, as well as the projected benefits of phased reductions in total emissions of CFCs and other ozone-depleting substances, including essential-use CFCs used for metered-dose inhalers (U.S. Environmental Protection Agency, ''Regulatory Impact Analysis: Compliance with section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals,'' July 1992).

B. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* OMB previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

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 instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 1.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule provides an otherwise unavailable benefit to those companies that are receiving essential use

allowances. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions from the 1996 phaseout of class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of class I ODSs.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule affects only the companies that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements the phaseout schedule and exemptions established by Congress in Title VI of the Clean Air Act.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule affects only the pharmaceutical companies that requested essential use allowances.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in this regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. 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. Therefore, 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 19, 2005.

VI. Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of the action in the **Federal Register**. Under section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

VII. Effective Date of This Final Rule

Section 553(d) of the Administrative Procedures Act (APA) generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. Today's final rule is issued under section 307(d) of the CAA, which states, ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA nevertheless is acting consistently with the policies underlying APA section 553(d) in making this rule effective August 19, 2005. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Because today's action grants an exemption to the phaseout of production and consumption of CFCs, EPA is making this action effective immediately to ensure continued availability of CFCs for medical devices.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Environmental protection, Exports, Imports, Reporting and recordkeeping requirements.

Dated: August 17, 2005.

Stephen L. Johnson,

Administrator.

n 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

n 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

n 2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

§ 82.8 Grant of essential use and critical use allowances.

(a) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2005

Company	Chemical	Quantity (metric tons)
Metered Dose Inhalers (for Oral Inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	270.90
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	480
Inyx USA, Ltd	CFC–11 or CFC–12 or CFC–114	111
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	816
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	69.18
Wyeth Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	73.40

* * * * *

[FR Doc. 05–16809 Filed 8–23–05; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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H.R. 481/P.L. 109–45

Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46

To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the ''Congresswoman Shirley A. Chisholm Post Office Building''. (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the ''Boone Pickens Post Office''. (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the ''Brian P. Parrello Post Office Building''. (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Aug. 2, 2005; 119 Stat. 462)

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Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

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Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

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