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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–07–0012; FV07–916/917–3 FR]

Late Payment and Interest Charges on Past Due Assessments Under the Nectarine and Peach Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises requirements concerning the collection of assessments owed under the nectarine and peach marketing orders. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative Committee and the Peach Commodity Committee (committees). This rule implements authorities contained in the marketing orders to allow the committees to apply late payment and interest charges on past due assessments owed the committees by handlers.

DATES: Effective Date: May 9, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Jennifer.Garcia3@usda.gov* or *Kurt.Kimmel@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes regulations that will allow the committees to apply late payment and interest charges on past due assessments owed the committees by handlers. This rule was unanimously recommended by the committees at meetings on November 30, 2006.

Sections 916.41 and 917.37 of the orders provide authority for the committees to assess handlers of California nectarines and peaches, respectively, to fund authorized activities such as research and promotion programs. Paragraph (b) of these sections was amended on July 21, 2006 (71 FR 41345), to authorize the committees, with the approval of the Secretary, to apply late payment charges, interest charges, or both on past due assessments.

At meetings on November 30, 2006, the committees recommended establishing rules and regulations to implement these authorities regarding late payment and interest charges. Although the majority of handlers remit their assessments in a timely manner, there are some handlers who do not. Implementing late payment and interest charges provides an incentive for handlers to pay assessments in a timely manner and removes any financial advantage for those who do not pay on time.

Specifically, the committees recommended that a late payment charge be applied to any assessment that has not been received in the committees' office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The committees recommended a late payment charge of 10 percent of the unpaid balance. In addition, interest would be applied to the unpaid balance and late payment charge for the number of days the payment is delinquent beyond 60 days.

The committees recommended that interest be applied at the current commercial prime rate charged by the committees' bank plus 2 percent beginning on the day the assessment becomes delinquent. However, USDA determined that a set interest rate of 1.5 percent per month is typical of comparable marketing order programs, and the recommendation was revised. Accordingly, new §§ 916.141 and 917.137 specifying implementation of the 10 percent late charge and 1.5 percent per month interest rate will be added to the rules and regulations of the nectarine and peach orders, respectively.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 175 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 676 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $6,500,000. Small agricultural producers are defined by the SBA as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2006 season, the committees' staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 722,223 containers to have annual receipts of $6,500,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2006 season, the committees' staff estimates that small handlers represent approximately 85 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 68 producers in the industry could be defined as other than small entities. For the 2006 season, the committees' staff estimated the average producer price received was $4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2006 season, the committees' staff estimates that small producers represent more than 90 percent of the producers within the industry.

With an average producer price of $4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 36,388,996 containers, the value of the 2006 packout is estimated to be $163,750,482. Dividing this total estimated grower revenue figure by the estimated number of producers (676) yields an estimate of average revenue per producer of about $242,234 from the sales of peaches and nectarines.

This rule adds new §§ 916.141 and 917.137 to the orders' rules and regulations, whereby late payment and interest charges on delinquent assessment payments will be implemented under the orders. Specifically, handlers not remitting their assessment payments within 60 days of the invoice date will be subject to a 10 percent late payment penalty and interest charges accruing at a rate of 1.5 percent per month. The late payment and interest charges should serve as an incentive for handlers to remit assessment payments when due to avoid paying an increased amount to the committees. This action is expected to facilitate program operations. Authority for this action is provided in paragraph (b) of §§ 916.41 and 917.37 of the orders.

This action will apply late payment and interest charges to assessments not paid within 60 days of the invoice date. Only handlers who are late in paying their assessments owed the committees will be impacted. For example, a delinquent invoice with late payment and interest charges applied will be calculated in the following manner: If a handler failed to pay an invoice for $5,000 within 60 days of the July 1, 2007, invoice date, a 10 percent late payment charge ($500) would be applied to the unpaid balance. In addition, interest charges at a rate of 1.5 percent per month would be added to the assessments owed and the accrued late payment charge. The 1.5 percent per month rate computes to an annual rate of 18 percent. This must be divided by 365 days to obtain the daily rate. This same July 1, 2007, invoice would be 62 days delinquent as of September 1, 2007, bringing the interest charges to $168.16 ($5,500 × .18 ÷ 365 × 62). Thus, the total assessment due, including late payment and interest charges, would be $5,668.16 as of September 1, 2007.

The committees discussed alternatives to this change, including not implementing late payment and interest charges at all. While only a small number of handlers fail to make assessments payments when due, the committees believe that a lack of action only compounds the problem. The committees considered applying late payment and interest charges at a lower rate but believe that a higher rate would be more likely to encourage compliance with the orders' assessment requirements. The joint executive committee discussed the issue and recommended the 10 percent late payment and prime plus 2 percent interest charges that the committee members unanimously approved and recommended to USDA.

However, as previously mentioned, USDA has determined that a set interest rate of 1.5 percent per month is typical of comparable marketing order programs, and the recommendation was revised.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the subcommittee and committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations on all issues. Like all committee meetings, the November 30, 2006, meetings were public meetings and all entities of all sizes were invited to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 29, 2007 (72 FR 14710). The committees posted the rule on their Web site. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending April 13, 2007, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter, representing the NAC and PCC, supported implementing authorities to allow the committees to apply late payment and interest charges on past due assessments.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the season began on April 1. Further, handlers are aware of this rule, which was recommended at public meetings. Also a 15-day comment period was provided for in the proposed rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

■ 2. Add § 916.235 to read as follows:

§ 916.235 Delinquent assessments.

(a) The Nectarine Administrative Committee shall impose a late payment charge on any assessment that has not been received in the Nectarine Administrative Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be 10 percent of the unpaid balance.

(b) In addition to that specified in paragraph (a) of this section, the Nectarine Administrative Committee shall impose an interest charge on any assessment payment that has not been received in the committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The interest charge shall be 1.5 percent per month and shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 60 day payment period.

PART 917—PEACHES GROWN IN CALIFORNIA

■ 3. Add § 917.259 to read as follows:

§ 917.259 Delinquent assessments.

(a) The Peach Commodity Committee shall impose a late payment charge on any assessment that has not been received in the Peach Commodity Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be 10 percent of the unpaid balance.

(b) In addition to that specified in paragraph (a) of this section, the Peach Commodity Committee shall impose an interest charge on any assessment payment that has not been received in the Peach Commodity Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The interest charge shall be 1.5 percent per month and shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 60 day payment period.

Dated: May 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–8630 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 205

RIN 0580–AA93

Clear Title; Technical Changes

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, with change, an interim rule that amended Clear Title regulations to allow States to use an approved unique identifier as an alternative to a social security number or taxpayer identification number in their systems providing clear title information. The change to the interim rule meets the express statutory requirement that an approved unique identifier be numerically organized on master lists. We are making additional changes to the clear title regulations as required by the amendments made by the 2002 Farm Bill. The primary effect of these changes will be to protect the identity of the producers of farm products. Secondary effects of the technical changes will be to improve the operation of the program and provide the States with more flexibility.

DATES: Effective May 8, 2007, we are confirming as final with change, the interim rule published on September 27, 2006 (71 FR 56338). That rule became effective on September 27, 2006.

FOR FURTHER INFORMATION CONTACT: Gary McBryde, GIPSA, USDA, 1400 Independence Avenue, Room 2430, Washington, DC 20250–3604; (202) 720–5552.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective September 27, 2006, and published in the **Federal Register** on September 27, 2006 (71 FR 56338), we amended the regulations in ''Subpart—Clear Title-Protection for Purchases of Farm Products'' (9 CFR 205 205.1–205.210) for the privacy protection of certain sellers of farm products to allow States to use ''other approved unique identifier'' as an alternative to a social security number or taxpayer identification number in their systems providing clear title information. The amendment clarified that an ''approved unique identifier'' means ''a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.''

We solicited comments concerning the interim rule. We received two comments as a result of publishing the interim final rule. The comments indicated that not only were Social Security Numbers unwarranted and unneeded, but also that unique identifiers were not needed. We consider the comments to be directed towards the current Act, not the regulations providing guidance on implementation of the amended Act.

However, we are making one change to the interim rule to further clarify and better reflect the statutory text. The interim rule definition of ''approved

unique identifier'' is changed to ''a combination of numbers selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.'' The change to the interim rule meets the express statutory requirement in section 1324(c)(2)(C) of the amended Food Security Act of 1985 that an approved unique identifier be numerically organized on master lists. The definition in the interim rule would have permitted, contrary to the statutory text, an identifier that may not have been able to be numerically organized in the master list.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 205

Agricultural commodities, Archives and records, Intergovernmental relations, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule that amended 9 CFR part 205 and that was published at 71 FR 56338 on September 27, 2006, is adopted with the following change:

PART 205—CLEAR TITLE PROTECTION FOR PURCHASES OF FARM PRODUCTS

■ 1. Amend § 205.1 by revising the definition of ''approved unique identifier'' to read as follows:

§ 205.1 Definitions

* * * * *

Approved Unique Identifier means a combination of numbers selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.

Alan Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–8794 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 509 and 585

[OTS–2007–0008]

RIN 1550–AC14

Prohibited Service at Savings and Loan Holding Companies

AGENCIES: Office of Thrift Supervision (OTS), Treasury.

ACTION: Interim final rule with request for comment.

SUMMARY: OTS is adopting an interim final rule implementing section 710(a) of the Financial Services Regulatory Relief Act of 2006, which added a new section 19(e) to the Federal Deposit Insurance Act (FDIA). Section 19(e) of the FDIA prohibits any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or money laundering or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense from holding certain positions with respect to a savings and loan holding company (SLHC). The interim final rule describes the actions that are prohibited under the new statute and describes procedures for applying for an OTS order granting a case-by-case exemption. The rule also provides two regulatory exemptions: An exemption for certain SLHC employees whose activities and responsibilities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations, and a temporary exemption for certain persons who held positions with respect to a SLHC as of the date of enactment of section 19(e) of the FDIA.

DATES: The interim final rule is effective on May 8, 2007. Comments on the rule must be received by July 9, 2007.

ADDRESSES: You may submit comments, identified by OTS–2007–0008, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click submit. Select Docket ID ''OTS–2007–0008'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''User Tips'' link at the top of the page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2007–0008.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2007–0008.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' Select Docket ID ''OTS–2007–0008'' to view public comments for this notice of proposed rulemaking.

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Director, Holding Companies and Affiliates, Supervision Policy, (202) 906–7488, or Karen Osterloh, Special Counsel, Regulations and Legislation, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 19(a) of the FDIA, a person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or money laundering or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense may not:

• Become, or continue as, an institution-affiliated party with respect to an insured depository institution;

• Own or control, directly or indirectly, any insured depository institution; or

• Otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution.[1] Under section 19(a)(1)(B) of the FDIA, an insured depository institution may not permit any person to engage in the prohibited conduct or continue any prohibited relationship. Section 19(b) of the FDIA states that whoever knowingly violates the statute shall be fined not more than $1,000,000 for each day the prohibition is violated or imprisoned for not more than 5 years or both.

Section 710(a) of the Financial Services Regulatory Relief Act of 2006, Pub. L. 109–251, effective October 13, 2006, amended section 19 of the FDIA by adding a new paragraph (e). New section 19(e)(1) applies sections 19(a) and (b) of the FDIA ''to any savings and loan holding company as if such savings and loan holding company were an insured depository institution * * *.'' Section 19(e)(2) of the FDIA authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of new paragraph (e).

OTS is amending its regulations to add a new part 585 to implement these new restrictions. The OTS interim final rule incorporates interpretations contained in the FDIC's Statement of Policy issued under section 19(a) of the FDIA (63 FR 66177) (Dec. 1, 1998) (FDIC's SOP) and in the FDIC's rules at 12 CFR part 303, subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses) and 12 CFR part 308, subpart M—Procedures and Standards Applicable to an Application pursuant to Section 19 of the FDIA. The provisions of the new interim final rule are summarized below.

II. Description of the Interim Final Rule

What does this part do? (§ 585.10)

Section 585.10 states that new part 585 implements the prohibitions under section 19(e)(1) of the FDIA. Section 585.10 also states that the new rule implements section 19(e)(2) of the FDIA, which permits the Director to provide exemptions, by regulation or order, from the application of the prohibition. The new part provides an exemption for SLHC employees whose activities and responsibilities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations, and a temporary exemption for certain persons who held positions with respect to a SLHC as of the date of enactment of section 19(e) of the FDIA. The interim final rule also describes procedures for applying for an OTS order granting an exemption on a case-by-case basis.

What definitions apply to this part? (§ 585.20)

Section 585.20 lists definitions used in the new part. These definitions are discussed throughout this preamble in connection with the relevant substantive provision.

Prohibition

What actions are prohibited? (§ 585.30)

Paragraph (a) of this section reiterates the prohibitions that apply to persons under section 19(e) of the FDIA.[2] Specifically, paragraph (a) states that if a person was convicted of a criminal offense described below, or agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense, he or she may not hold certain positions with any SLHC.

First, the person may not become, or continue as, an institution-affiliated party with respect to any SLHC. For the purposes of the new part, the term ''institution-affiliated party'' is defined in 12 U.S.C. 1813(u), except that this definition is applied by substituting SLHC for insured depository institution each place that it appears. Under this definition, an ''institution-affiliated party'' of a SLHC includes:

• Any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, a SLHC. This category would also include persons who are deemed to be *de facto* employees of a SLHC, based on applicable standards of employment law.[3]

• Any person who has filed or is required to file a change in control notice with the appropriate Federal banking agency under 12 U.S.C. 1817(j)—the Change in Bank Control Act.

• Any shareholder, consultant, joint venture partner, and any other person determined by [OTS] (by regulation or case-by-case) who participates in the conduct of the affairs of the SLHC. Participation in the conduct of the affairs of the SLHC is discussed below.

• Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the SLHC.

Second, the person may not own or control, directly or indirectly, a SLHC. For the purposes of defining ''control'' and ownership under section 19(a) of the FDIA, FDIC's SOP uses the definition of ''control'' in the Change in Bank Control Act (12 U.S.C. 1817(j)(8)(B)). The OTS rule implementing the Change in Bank Control Act and the Savings and Loan Holding Company Act is at 12 CFR part 574. The rule provides that a person will own or control a SLHC if he or she owns or controls that company under 12 CFR part 574.

Finally, the person may not otherwise participate, directly or indirectly, in the conduct of the affairs of a SLHC. Given the changes in banking, including financial modernization and the rapid pace of technology, a regulatory listing of activities that constitute participation is neither practical nor advisable. Accordingly, like FDIC's SOP, the interim final rule does not define precisely what activities constitute ''participation.'' Rather, agency and court decisions will provide the guide as to what standards will be applied. As a general proposition, however, participation will depend upon the degree of influence or control over the management or affairs of the SLHC. Those who exercise major policymaking functions at a SLHC would fall within this category.[4]

OTS notes that the statutory prohibitions do not directly apply to a person who is an institution-affiliated party with respect to a non-depository institution *subsidiary* of a SLHC, owns or controls such a subsidiary, or participates in the affairs of such a subsidiary.[5] However, it is possible that a person occupying such a position with a subsidiary could be subject to the

[1] 12 U.S.C. 1829(a)(1). The Federal Deposit Insurance Corporation (FDIC) may give prior written consent to actions that would otherwise violate the prohibition. The statute imposes a ten-year ban against the FDIC's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by FDIC and approval by the sentencing court.

[2] A person is defined to include only individuals, but does not include a corporation, firm or other business entity. *See* Section A. of FDIC's SOP, 63 FR at 66184.

[3] *Id.*

[4] *Id.*

[5] Accordingly, section 585.20 of the interim rule: (1) defines SLHC by cross-reference to OTS existing regulations at 12 CFR 583.20, and (2) excludes a subsidiary of a SLHC that is not itself a SLHC.

prohibitions if the person participates in the conduct of the affairs of the SLHC. For example, a director or officer of a subsidiary will be covered if he or she is in a position to influence or control the management or affairs of the SLHC.[6]

Section 585.30(b) restates the statutory prohibition applicable to SLHCs. Specifically, this section provides that a SLHC may not permit any person described above to engage in any conduct or to continue any prohibited relationship. OTS believes that section 19(e) imposes a duty upon the SLHC to make a reasonable inquiry regarding a person's history, which consists of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or program entry for a covered offense. At a minimum, each SLHC should establish a screening process that provides information concerning any convictions or program entry pertaining to a job applicant. This would include, for example, the completion of a written employment application requiring a listing of all convictions and program entries.[7]

What convictions or agreements to enter into pre-trial diversions or similar programs are covered by this part? (§ 585.40)

Section 585.40 describes the types of convictions and agreements that are covered by the part. The interim final rule states that part 585 applies to:

- Any conviction of a criminal offense (*i.e.*, a felony or misdemeanor) involving dishonesty, breach of trust, or money laundering. Convictions do not cover arrests, pending cases not brought to trial, acquittals, convictions reversed on appeal, pardoned convictions, or expunged convictions.[8]
- Any agreement to enter into a pretrial diversion or similar program in connection with a prosecution for a criminal offense involving dishonesty, breach of trust or money laundering. A pretrial diversion or similar program is a program involving a suspension or eventual dismissal of charges or of a criminal prosecution based upon the person's agreement for treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternative.[9]

A determination whether a criminal offense involves dishonesty or breach of trust will be based on the statutory elements of the crime, rather than the specific factual circumstances surrounding a crime.[10] For SLHCs attempting to comply with the prohibitions, the analysis of the factual background behind crimes could prove to be an impossible task since records and factual background will not always be available.

''Dishonesty'' means directly or indirectly to cheat or defraud, to cheat or defraud for monetary gain or its equivalent, or to wrongfully take property belonging to another in violation of any criminal statute. It includes acts involving a want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest. A ''breach of trust'' means a wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission. All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances, as defined under Federal law, require an application unless the person is exempt under § 585.100.[11]

As noted above, a conviction of a criminal offense excludes pardoned and expunged convictions. OTS solicits comments on whether states and other jurisdictions have any analogous procedures for expunging any record regarding participation in a pretrial diversion and similar program and whether it is feasible to recognize these procedures in the final rule.

What adjudications and offenses are not covered by this part? (§ 585.50)

The interim final rule excludes certain types of adjudications and criminal offenses from coverage. Specifically, the part does not cover any adjudication by a court against a person as a youthful offender or as a juvenile delinquent. Such convictions are generally not considered to be convictions for criminal offenses. Moreover, it is questionable whether SLHCs could obtain records regarding such adjudications.

The rule also does not cover certain *de minimis* criminal offenses. OTS believes that the exempted offenses are of such a minimal nature and of such low risk that the affected person may hold any position with a SLHC. This approach has the advantage of addressing a large number of persons who have agreed to pretrial diversion since in most cases, the crimes involved in such programs are not serious ones that involve significant risk. Under the interim final rule, a criminal offense is *de minimis* if six criteria are met. First, the person may have only one conviction or pretrial diversion. Second, the offense must have been punishable by imprisonment for a term of less than one year, a fine of less than $1,000, or both, and the person must not have served time in jail for the offense. Third, the conviction or program must be entered at least five years before the date the person first held a position described in § 585.30(a) above. Fourth, the offense may not involve an insured depository institution, an insured credit union, or other banking organization (including a SLHC, bank holding company, or financial holding company). Fifth, the person must disclose the conviction or pretrial diversion or similar program to all insured depository institutions, insured credit unions, and other banking organizations the affairs of which he or she participates. Finally, the person must be covered by a fidelity bond to the same extent as others in similar positions with the SLHC.[12]

Like the FDIC policy statement, the OTS interim final rule states that a *de minimis* criminal offense must be punishable by imprisonment for a term of less than one year, a fine of less than $1,000, or both. OTS specifically requests comment on two alternatives to this standard. First, OTS is considering applying a standard that more closely tracks the way state and local jurisdictions distinguish misdemeanor and felony offenses. OTS specifically requests suggestions on how this might be accomplished. Alternatively, OTS may define a *de minimis* criminal offense by reference to the prison sentence or fine actually imposed on an individual in a particular case. For pre-trial diversions, this criterion could be based on the suspended sentence or, where there is no suspended sentence, on the maximum punishment under the statute. OTS specifically solicits comments on whether this alternative is appropriate and, if so, what prison sentence or fine should constitute a *de minimis* offense.

[6] *Compare* Section A. of FDIC's SOP, 63 FR at 66184 (''Directors and officers of * * * subsidiaries of an insured depository institution will be covered if they are in a position to influence or control the management or affairs of the insured institution.'')

[7] *See* Introduction to FDIC's SOP, 63 FR at 66184.

[8] *See* Section B.(1) of FDIC's SOP, 63 FR at 66184.

[9] *See* Section B.(2) of FDIC's SOP, 63 FR at 66184–85.

[10] *See* Section B.(3) of FDIC's SOP, 63 FR at 66185.

[11] *Id.*

[12] *See* Sections B.(4) & B.(5) of FDIC's SOP, 63 FR at 66185.

Exemptions

Who is exempt from the prohibition under this part? (§ 585.100)

As noted above, section 19(e)(2) of the FDIA authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the prohibition. The primary purpose of section 19 of the FDIA, as originally enacted, appears to be to lower insured depository institutions' risk of exposure to theft, embezzlement, and other misconduct by the institution's employees, contractors, and others involved in the institution's operations and affairs. Accordingly, when reviewing applications for relief from section 19(a) of the FDIA, an essential criterion assessed by FDIC is whether the affiliation, control, or participation of a person in the conduct of the affairs of a depository institution will threaten the safety and soundness of any insured depository institution; will threaten the interests of the depositors of any such institution; or will threaten to impair the public confidence in any such institution.[13] OTS believes that it is appropriate to consider these impacts when it decides whether to issue an exemption. Additionally, while the focus of the FDIA is on the impact to the depository institution and the deposit insurance fund, OTS believes that the purposes of new section 19(e) of the FDIA also require consideration of an exempted person's ability to impact the SLHC, particularly with respect to major policymaking.[14]

In the months following the enactment of section 19(e) of the FDIA, OTS received several inquiries from SLHCs that conduct forestry, manufacturing, or retail merchandising operations at the holding company level. These SLHCs employ thousands of employees that engage solely in these operations. The SLHCs report that the vast majority of these employees have no policymaking functions, do not otherwise participate in the conduct of the affairs of the SLHC or the subsidiary insured depository institution, and have no working relationship with the subsidiary insured depository institution. These SLHCs argue that applying section 19(e) of the FDIA to these employees would require the SLHCs to implement unnecessary and costly background checks and undertake unnecessary personnel actions. They also indicate that the application of section 19(e) of the FDIA would place them at a competitive disadvantage with respect to others in their industry that do not own an insured depository institution. As a result, several SLHCs requested exemptions from the prohibitions in section 19(e) of the FDIA for employees in their forestry, manufacturing, and retail merchandising operations.

OTS believes that it is unlikely that employees whose responsibilities and activities are limited solely to forestry, manufacturing or retail merchandising operations at the SLHC level would constitute a threat to safety and soundness of a subsidiary insured depository institution, would threaten the interests of the institution's depositors, or would threaten to impair the public confidence in the institution. While employees at the highest levels may be in a position to impact the major policymaking functions of the SLHC, the exemption granted in the interim final rule imposes certain conditions designed to ensure that the SLHC would not be materially impacted (see discussion of conditions below). Subject to these conditions, OTS finds that an exemption for SLHC employees whose responsibilities and activities are limited solely to forestry, manufacturing, and retail merchandising operations is consistent with the purposes of section 19(e) of the FDIA.

In addition to forestry, manufacturing, and retail merchandising employees, OTS reviewed existing SLHC operations to determine whether a broader exemption might be appropriate and necessary. Based on this review, OTS has concluded that its regulated SLHCs also engage in agricultural operations or provide public utilities at the SLHC level and has decided to extend the exemption to SLHC employees whose activities and responsibilities are limited solely to such operations. Employees engaged solely in such activities at the SLHC level are similar to forestry, manufacturing and retail merchandising employees with respect to their ability to threaten the safety and soundness of the institution, threaten the interests of depositors or impair the public confidence of an institution. Moreover, the exemption granted in the interim final rule imposes certain conditions designed to ensure that the SLHC would not be materially impacted. Subject to these conditions, OTS believes that an exemption for these SLHC employees is also consistent with the purposes of section 19(e) of the FDIA.

To qualify for the exemption, the employee's responsibilities and activities must be limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations. The exemption would apply to employees who are directly engaged in these activities and to employees who provide administrative services in support of these activities. Because the employee's responsibilities and activities must be limited solely to the listed operations, however, the exemption may not exempt all support personnel. For example, if a SLHC's human resources division also serves divisions or SLHC subsidiaries that conduct operations beyond those listed in the exemption, employees of that division would not fall within the exemption, unless it can be demonstrated that a employee's particular responsibilities and activities are limited solely to the listed operations.

As noted above, the interim final rule includes conditions designed to ensure that an exempted person does not have the ability to impact the SLHC, particularly with regard to major policymaking functions. Specifically, the rule requires a SLHC to maintain a list of all policymaking positions and review this list annually. The employee's position may not appear on the SLHC's list, and the employee may not, in fact, exercise any policymaking function with respect to the SLHC.[15] Finally, the employee may not be an institution-affiliated party of the SLHC other than by virtue of the exempted

[13] *See* section D. of FDIC's SOP, 63 FR at 66185.

[14] OTS believes that all directors, and those officers of a SLHC who meet the definition of ''executive officer'' of the SLHC under 12 CFR 215.2(e)(1)(Regulation O), are involved in major policymaking. Individuals that meet the definition of ''officer'' under the Securities and Exchange Commission's rules at 17 CFR 240.16a–1(f) are also involved in major policymaking. 17 CFR 240.16a–1(f) states: ''The term ''officer'' shall mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer * * *. For these purposes, a 'policy-making function' is not intended to include policy-making functions that are not significant.''

[15] OTS examiners will review the list of policymaking positions during regularly scheduled SLHC examinations. Examiners may request a list of other positions or job classifications within the organization to reasonably conclude that such positions would not normally entail policymaking functions. Examiners will also review the SLHC's policies, procedures, and practices in complying with this section. During this review, OTS examiners will consider the SLHC's methods for identifying and maintaining the list of policymaking positions, as well as review a sample of employees occupying policymaking positions to verify that the SLHC obtains appropriate background checks.

employment, may not own or control, directly or indirectly, the SLHC and may not participate, directly or indirectly, in the conduct of the affairs of the SLHC.[16]

OTS requests comments on all aspects of this exemption. For example: Are the conditions imposed on this exemption appropriate? Are additional conditions needed to protect the interests described above? Are there other facts or circumstances that might warrant additional exemptions for classes of persons or SLHCs?

OTS may modify this exemption based on the comments received on the interim final rule. If OTS narrows the scope of this exemption in the final rule, it will provide a delayed effective date for the modification to permit persons and SLHCs to comply with the changes. Until that delayed effective date, any person or SLHC may rely on the exemption contained in § 585.100(a).

In addition to this exemption for employees, OTS is temporarily exempting any prohibited person who was an institution-affiliated party with respect to a SLHC, who owned or controlled, directly or indirectly a SLHC, or who otherwise participated directly or indirectly in the conduct of the affairs of the SLHC on October 13, 2006. The exemption would permit the person to continue to hold the position with the SLHC for a limited time. The exemption expires 120 days after the effective date of this interim final rule, unless the SLHC or the person has filed an application seeking a case-by-case exemption for the person under § 585.110 within the 120-day time period. If the SLHC or the person files such an application, the exemption expires upon OTS's disposition of the application.

OTS believes that this exemption is necessary to ensure that the new statute does not needlessly disrupt SLHC operations by requiring the immediate termination of existing relationships. OTS has designed this exemption to ensure that SLHCs have sufficient time to determine which persons have convictions or pre-trial diversions involving the described criminal offenses, and to provide a meaningful opportunity for the SLHC or the prohibited person to demonstrate that the person's continued relationship with the SLHC is consistent with the purposes of the statute. Accordingly, OTS has concluded that this exemption is consistent with the purposes of section 19(e) of the FDIA.

How do I apply for a case-by-case exemption? (§ 585.110)

In addition to the regulatory exemption at § 585.100, the interim final rule sets out an application process for a case-by-case exemption from the prohibitions. To obtain a case-by-case exemption, a person or SLHC must file an application with OTS. An applicant may not file an application less than one year after the OTS's denial of the same exemption.[17] Additionally, an applicant may seek an exemption only with respect to a designated position (or designated positions) with a named SLHC. Thus, if OTS has approved an exemption for a person for a designated position with respect to a named SLHC, another exemption must be obtained before the person may hold a different position with the named SLHC or become an institution-affiliated party of another SLHC, own or control directly or indirectly another SLHC, or participate in the conduct of the affairs of another SLHC.[18] For these purposes, an exemption granted for a position with respect to a named SLHC does *not* exempt a position with respect to another SLHC that is within the same corporate family (*e.g.*, a SLHC that is a parent or subsidiary of the named SLHC).[19]

OTS will process the application under the standard treatment in 12 CFR part 516, subpart A, and will review the application under the procedures in 12 CFR part 516, subpart E (excluding 12 CFR 516.270 and 516.280). The prohibitions in section 19(e) of the FDIA, however, will continue to apply pending OTS action on an application unless the person qualifies for the temporary exemption at § 585.100(b).

What factors will OTS consider in reviewing my exemption application? (§ 585.120)

An application may cover either a specified position with a named SLHC or a person to serve at a specified position with a named SLHC. In determining whether to approve an exemption application, OTS will first consider the extent to which the position that is the subject of the application would permit a person to:

- Participate in the major policymaking functions of the SLHC; or
- Threaten the safety and soundness of any insured depository institution that is controlled by the SLHC, the interests of its depositors, or the public confidence in the insured depository institution.[20]

OTS will also consider whether the applicant has demonstrated the person's fitness to hold the described position. Some applications may be approved without an extensive review of a person's fitness, because the position will not permit a person to participate in major policymaking functions or to threaten the safety and soundness of a depository institution, the interests of its depositors or public confidence in the institution. Persons who will occupy clerical, maintenance, service or purely administrative positions, for example, will generally fall into this category.

In making the determinations under § 585.120, OTS will consider all relevant factors including the position, the amount of influence and control a person will be able to exercise over the affairs and operations of the SLHC and the insured depository institution, the ability of the SLHC management to supervise and control the activities of the person, and, where applicable, the level of ownership that a person has in the SLHC. In addition, OTS will consider the specific nature and circumstances of the criminal offense and any evidence of rehabilitation. The question of whether a person was guilty of the underlying offense, however, is not a relevant consideration.[21]

How will I know if my application is approved? (§ 585.130)

OTS will issue an order approving or denying an application. An approval order will include a summary of the relevant factors that OTS considered in approving the application, and will require fidelity bond coverage for a position to the same extent as similar positions with the SLHC. The approval order may also include such other conditions as may be appropriate.

A denial order will include a summary of the relevant factors that OTS considered in the denial. The denial order will also include a statement indicating that the applicant may file a written request demonstrating good cause for a hearing on the denial, and that the applicant must file this request within 20 days after the date of issuance of the denial order.

What procedures govern a hearing on my application? (§ 585.140)

OTS will review a hearing request to determine if the applicant has

[16] As a result of these conditions, an officer of a SLHC, for example, would not be within the scope of the exemption.

[17] *See* FDIC rules at 12 CFR 308.158(b).

[18] *See* FDIC rules at 12 CFR 303.222.

[19] In the event of a merger or similar transaction, the person or SLHC would not have to seek a new exemption if the SLHC is the resulting entity in the transaction and the responsibilities of the position do not materially change in connection with the transaction.

[20] *See* OTS's discussion of § 585.100 above.

[21] *See* FDIC rules at 12 CFR 308.157 and Section D. of FDIC' SOP, 63 FR at 66185.

demonstrated good cause for a hearing on the application. Within 30 days after the filing of a request, OTS will notify the applicant in writing of its decision to grant or deny the hearing request. If OTS grants the request, it will order a hearing to be commenced within 60 days of the issuance of the notification. Parties may request a later hearing date.

OTS rules at 12 CFR part 509 contain the rules of practice and procedure in adjudicatory proceedings. The interim final rule adds a new subpart D to part 509 to govern the procedures for hearings on a denial of an application for a case-by-case exemption under section 19(e) of the FDIA. The interim final rule incorporates many of the rules of practice and procedure applicable in adjudicatory proceedings at 12 CFR part 509. In addition, it specifically addresses such matters as: The use of written submissions in lieu of hearing, the location and timing of the hearing, the designation of a presiding officer, a prohibition on discovery, the issuance of subpoenas, the taking of testimony and depositions, the administration of oaths, transcripts, the supplementation of the record, recommendations by the presiding officer, certification of the record, burden of proof, and the decision by the Director.

III. Regulatory Findings

A. Advance Notice and Public Comment

The Administrative Procedure Act (APA) authorizes agencies to waive notice and comment procedures on a rule when the agency ''for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [22] OTS believes the rule meets the APA standard and that it may issue this rule as a final rule without advance notice and comment.

Section 19(e) became effective on October 13, 2006, and imposes severe penalties for violations. Under this statute, those who knowingly violate section 19(e) are now subject to fines of not more than $1 million for each day the prohibition is violated, imprisonment for not more than 5 years, or both. OTS believes that SLHCs and others must be given timely guidance to permit them to conform their behavior and avoid the severe penalties prescribed by the statute. Accordingly, to the extent that the interim final rule interprets the prohibitions in section 19(e) of the FDIA, OTS finds that any delay in the issuance of the interim final rule is impractical and contrary to the public interest. OTS also finds that prior notice and comment on its interpretation of the section 19(e) prohibitions is unnecessary. OTS closely conformed its interpretations of section 19(e) to the interpretations contained in FDIC's SOP, which was previously subject to notice and public comment and has been in effect since 1998. SLHCs should be familiar with the concepts in FDIC's SOP since it applies to certain individuals who hold positions with SLHCs.[23]

As noted above, the interim final rule also contains a regulatory exemption for SLHC employees if their responsibilities and activities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations. As discussed more fully in this preamble, OTS has concluded that the application of the section 19 prohibition to these employees will not serve the purposes of the statute. Moreover, any delay in the issuance of this exemption for notice and comment procedures would require SLHCs to implement unnecessary and costly background checks and to undertake unnecessary personnel actions to terminate or transfer employees. Accordingly, OTS finds that notice and public comment on this aspect of the rule is also unnecessary and contrary to the public interest.

Similarly, the interim final rule includes a temporary exemption for certain persons who held positions with respect to a SLHC as of the date of enactment of section 19(e) of the FDIA. This exemption was designed to ensure that SLHC operations are not needlessly disrupted by requiring the immediate termination of existing relationships. Accordingly, OTS also finds that notice and public comment on this exemption is also unnecessary and contrary to the public interest.

Finally, the interim final rule prescribes application and hearing procedures for exemption requests. This portion of the interim final rule is an agency rule of procedure and practice, which is exempt from notice and comment procedures.[24] In addition, this portion of the interim final rule closely follows the related FDIC rules and the interpretations contained in FDIC's SOP. Since the related FDIC rules and FDIC's SOP were subject to notice and public comment and have been applicable to depository institutions and certain SLHC positions for many years, OTS believes that prior notice and comment on these standards are also unnecessary and contrary to the public interest.

Although OTS has concluded that public notice and comment are not required for this interim final rule, it invites comments during the 60-day period following publication. In developing a final rule, OTS will consider all public comments it receives within that period.

B. Effective Date

Under section 553(d) of the APA, a rule may not be effective until 30 days after its publication.[25] This provision, however, does not apply where the agency finds good cause for making the rule effective immediately. For the reasons set forth above, OTS finds that there is good cause for making this rule effective immediately. OTS also notes that the APA's delayed effective date requirement does not apply to a substantive rule that grants or recognizes an exemption or that relieves a restriction. As described in this preamble, this interim final rule exempts certain persons from the prohibitions in section 19(e) of the FDIA and prescribes procedures for granting additional exemptions on a case-by-case basis. Because this rule grants exemptions and relieves restrictions from the statutory prohibition, it is not subject to the 30-day delayed effective date requirement.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) [26] requires that new regulations and amendments to existing regulations take effect on the first day of a calendar quarter that begins on or after the date of publication of the rule. This delayed effective date provision, however, applies only if the rule imposes additional reporting, disclosure, or other new requirements on insured depository institutions. This rule imposes no reporting, disclosure or other requirements on any insured depository institution. Section 302 is inapplicable.

C. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) is required only when an agency is required to publish a notice of proposed rulemaking.[27] As already noted, OTS has determined that publication of a notice of proposed rulemaking is not required for this interim final rule. Accordingly, the RFA does not require

[22] 5 U.S.C. 553(b)(B).

[23] See Section A. of FDIC's SOP, 63 FR at 66184 (Section 19 would apply to [a holding company's] directors and officers to the extent that they have the power to define and direct the policies of the insured institution.'')

[24] 5 U.S.C. 553.

[25] 5 U.S.C. 553(d).

[26] 12 U.S.C. 4802.

[27] 5 U.S.C. 603.

an initial regulatory flexibility analysis. Nonetheless, OTS has considered the likely impact of this rule on small entities. This interim final rule provides guidance to SLHCs and others explaining how OTS will interpret newly enacted statutory prohibitions, provides exemptions from these prohibitions, and describes procedures for obtaining case-by-case exemptions from the newly enacted prohibitions contained in section 19(e) of the FDIA. On the whole, the interim final rule will reduce the burden of compliance with the new statute. For these reasons, the OTS has concluded that the interim final rule should not have a significant impact on a substantial number of small entities, as defined in the RFA.

D. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. OTS is requesting comment on a proposed information collection. OTS also gives notice that the proposed collection of information was submitted to OMB for review and approval (44 U.S.C. 3507(d)). At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the information collection should be modified. Any material modifications will be submitted to OMB for review and approval. All comments will become a matter of public record.

Send comments, referring to the collection by title of the proposal or by ''Prohibited Service at SLHCs (1550–NEW),'' to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; 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 *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. 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, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of OTS's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

In this interim final rule, OTS is soliciting comments concerning the following information collection.

Title: Prohibited Service at Savings and Loan Holding Companies.

OMB Control Number: 1550–NEW.

Type of Review: New collection.

Frequency of Response: On occasion.

Affected Public: Savings and loan holding companies.

Abstract: OTS is publishing this interim final rule implementing section 710(a) of the Financial Services Regulatory Relief Act of 2006, which added a new section 19(e) to the Federal Deposit Insurance Act (FDIA). Section 19(e) of the FDIA prohibits any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or money laundering or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense (prohibited person) from holding certain positions with respect to a savings and loan holding company (SLHC). This interim rule describes actions that are prohibited under the new statute and describes procedures for applying for an OTS order granting a case-by-case exemption.

In order for a prohibited person to obtain or to continue in certain positions with an SLHC, the SLHC or the individual will need to apply to the OTS for an approval order for a case-by-case exemption. OTS does not believe that this requirement is punitive in intent. Rather, the primary criteria in assessing such applications is whether the prohibited person in his/her proposed capacity at the SLHC participates in the major policy making functions of the SLHC or threatens the safety and soundness of the insured depository institution that is controlled by the SLHC, the interests of its depositors, or the public confidence in the institution. The proposed collection of information is not burdensome in nature and pertains to the position at the SLHC to be held by the prohibited person, the prohibited person's level of ownership of the SLHC, the specific nature of the offense involved, evidence of rehabilitation, and other relevant factors.

Estimated Number of Respondents: 50.

Estimated Burden Hours per Response: 16 hours.

Estimated Total Burden: 800 hours.

E. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995,[28] requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the interim final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Rather, this interim final rule will reduce the burden of compliance with newly enacted statutory prohibitions applicable to SLHCs and others by explaining how OTS will interpret newly enacted statutory prohibitions, providing regulatory exemptions from these prohibitions, and describing procedures for obtaining case-by-case exemptions from the newly enacted prohibitions contained in section 19(e) of the FDIA. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

F. Executive Order 12866

OTS has determined that the interim final rule with request for comment is

[28] Pub. L. 104–4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act).

not a significant regulatory action under Executive Order 12866.

G. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. OTS believes that the interim final rule is presented in a clear and straightforward manner and solicits comments on ways to make the rule easier to understand.

List of Subjects

12 CFR Part 509

Administrative practice and procedure, Penalties.

12 CFR Part 585

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

■ For the reasons in the preamble, OTS is amending chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 1. Revise the authority citation for part 509 to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 1829(e), 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 2. In § 509.1, add a new paragraph (i) to read as follows:

§ 509.1 Scope.

* * * * *

(i) Subpart D of this part governs hearings on denials of applications for case-by-case exemptions under 12 CFR part 585, which implements section 19(e) of the FDIA.

■ 3. Add a new subpart D to read as follows:

Subpart D—Exemptions under Section 19(e) of the FDIA

Sec.
509.300 Scope.
509.301 Hearing procedures.

Subpart D—Exemptions under Section 19(e) of the FDIA

§ 509.300 Scope.

The procedures in this subpart D govern hearings on denials of applications for case-by-case exemptions under 12 CFR part 585. Part 585 implements section 19(e) of the FDIA, which prohibits persons who have been convicted of certain criminal offenses or who have agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such criminal offenses from occupying various positions with a savings and loan holding company.

§ 509.301 Hearing procedures.

(a) *Hearings.* The following procedures apply to hearings under 12 CFR part 585.

(1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Director.

(2) An applicant may elect in writing to have the matter determined on the basis of written submissions, rather than an oral hearing.

(3) The parties to the hearing are OTS Enforcement counsel and the applicant.

(4) 12 CFR 509.2, 509.4, 509.6 through 509.12, and 509.16 apply to the hearing.

(5) Discovery is not permitted.

(6) A party may introduce relevant and material documents and make oral argument at the hearing.

(7) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties before to the hearing. Witnesses must be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party may cross-examine any witness presented by the opposing party. OTS will furnish a transcript of the proceedings upon an applicant's request and upon the payment of the costs of the transcript.

(8) The presiding officer has the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees are paid in accordance with 12 CFR 509.14.

(9) Upon the request of a party, the record will remain open for five business days following the hearing for additional submissions to the record.

(10) OTS Enforcement Counsel has the burden of proving a *prima facie* case that a person is prohibited from a position under section 19(e) of the FDIA. The applicant has the burden of proof on all other matters.

(11) The presiding officer must make recommendations to the Director, where possible, within 20 days after the last day for the parties to submit additions to the record.

(12) The presiding officer must forward his or her recommendation to the Director who shall promptly certify the entire record, including the presiding officer's recommendations. The Director's certification will close the record.

(b) *Decision.* After the certification of the record, the Director will notify the parties of his or her decision by issuing an order approving or denying the application.

(1) An approval order will require fidelity bond coverage for the position to the same extent as similar positions with the savings and loan holding company. The approval order may include such other conditions as may be appropriate.

(2) A denial order will include a summary of the relevant factors under 12 CFR 585.120(b).

■ 4. Add a new part 585 to read as follows:

PART 585—PROHIBITED SERVICE AT SAVINGS AND LOAN HOLDING COMPANIES

Sec.
585.10 What does this part do?
585.20 What definitions apply to this part?

Subpart A—Prohibition

585.30 What actions are prohibited?
585.40 What convictions or agreements to enter into pre-trial diversions or similar programs are covered by this part?
585.50 What adjudications and offenses are not covered by this part?

Subpart B—Exemptions

585.100 Who is exempt from the prohibition under this part?
585.110 How do I apply for a case-by-case exemption?
585.120 What factors will OTS consider in reviewing my exemption application?
585.130 How will I know if my application is approved?
585.140 What procedures govern a hearing on my application?

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, and 1829(e)

§ 585.10 What does this part do?

This part implements section 19(e)(1) of the Federal Deposit Insurance Act (FDIA), which prohibits persons who have been convicted of certain criminal offenses or who have agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such criminal offenses from occupying various positions with a savings and loan holding company. This

part also implements section 19(e)(2) of the FDIA, which permits the Director to provide exemptions, by regulation or order, from the application of the prohibition. This part provides an exemption for savings and loan holding company employees whose activities and responsibilities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations, and a temporary exemption for certain persons who held positions with respect to a savings and loan holding company as of October 13, 2006. The part also describes procedures for applying for an OTS order granting a case-by-case exemption.

§ 585.20 What definitions apply to this part?

The following definitions apply to this part:

Institution-affiliated party is defined at 12 U.S.C. 1813(u), except that the phrase ''savings and loan holding company'' is substituted for ''insured depository institution'' each place that it appears in that definition.

Person means an individual and does not include a corporation, firm or other business entity.

Savings and loan holding company is defined at 12 CFR 583.20, but excludes a subsidiary of a savings and loan holding company that is not itself a savings and loan holding company.

Subpart A—Prohibition

§ 585.30 What actions are prohibited?

(a) *Person.* If a person was convicted of a criminal offense described in § 585.40, or agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense, he or she may not:

(1) Become, or continue as, an institution-affiliated party with respect to any savings and loan holding company.

(2) Own or control, directly or indirectly, any savings and loan holding company. A person will own or control a savings and loan holding company if he or she owns or controls that company under 12 CFR part 574.

(3) Otherwise participate, directly or indirectly, in the conduct of the affairs of any savings and loan holding company.

(b) *Savings and loan holding company.* A savings and loan holding company may not permit any person described in paragraph (a) of this section to engage in any conduct or to continue any relationship prohibited under that paragraph.

§ 585.40 What convictions or agreements to enter into pre-trial diversions or similar programs are covered by this part?

(a) *Covered convictions and agreements.* Except as described in § 585.50, this part covers:

(1) Any conviction of a criminal offense involving dishonesty, breach of trust, or money laundering. Convictions do not cover arrests, pending cases not brought to trial, acquittals, convictions reversed on appeal, pardoned convictions, or expunged convictions.

(2) Any agreement to enter into a pretrial diversion or similar program in connection with a prosecution for a criminal offense involving dishonesty, breach of trust or money laundering. A pretrial diversion or similar program is a program involving a suspension or eventual dismissal of charges or of a criminal prosecution based upon an agreement for treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternative.

(b) *Dishonesty or breach of trust.* A determination whether a criminal offense involves dishonesty or breach of trust is based on the statutory elements of the crime.

(1) ''Dishonesty'' means directly or indirectly to cheat or defraud, to cheat or defraud for monetary gain or its equivalent, or to wrongfully take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving a want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

(2) ''Breach of trust'' means a wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

§ 585.50 What adjudications and offenses are not covered by this part?

(a) *Youthful offender or juvenile delinquent.* This part does not cover any adjudication by a court against a person as:

(1) A youthful offender under any youthful offender law; or

(2) A juvenile delinquent by a court with jurisdiction over minors as defined by state law.

(b) *De minimis criminal offense.* This part does not cover *de minimis* criminal offenses. A criminal offense is *de minimis* if:

(1) The person has only one conviction or pretrial diversion or similar program of record;

(2) The offense was punishable by imprisonment for a term of less than one year, a fine of less than $1,000, or both, and the person did not serve time in jail.

(3) The conviction or program was entered at least five years before the date the person first held a position described in § 585.30(a); and

(4) The offense did not involve an insured depository institution, insured credit union, or other banking organization (including a savings and loan holding company, bank holding company, or financial holding company).

(5) The person must disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates.

(6) The person must be covered by a fidelity bond to the same extent as others in similar positions with the savings and loan holding company.

Subpart B—Exemptions

§ 585.100 Who is exempt from the prohibition under this part?

(a) *Employees.* An employee of a savings and loan holding company is exempt from the prohibition in § 585.30, if all of the following conditions are met:

(1) The employee's responsibilities and activities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations.

(2) The savings and loan holding company maintains a list of all policymaking positions and reviews this list annually.

(3) The employee's position does not appear on the savings and loan holding company's list of policymaking positions, and the employee does not, in fact, exercise any policymaking function with the savings and loan holding company.

(4) The employee:

(i) Is not an institution-affiliated party of the savings and loan holding company other than by virtue of the employment described in paragraph (a) of this section.

(ii) Does not own or control, directly or indirectly, the savings and loan holding company; and

(iii) Does not participate, directly or indirectly, in the conduct of the affairs of the savings and loan holding company.

(b) *Temporary exemption.* (1) Any prohibited person who was an institution-affiliated party with respect to a savings and loan holding company, who owned or controlled, directly or

indirectly a savings and loan holding company, or who otherwise participated directly or indirectly in the conduct of the affairs of a savings and loan holding company on October 13, 2006, may continue to hold the position with the savings and loan holding company.

(2) This exemption expires on September 5, 2007, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

(i) The date of issuance of an OTS order approving the application under § 585.130(a);

(ii) The expiration of the 20-day period for filing a request for hearing under § 585.130(b) provided there is no timely request for hearing following the issuance of an OTS order denying the application under that section;

(iii) The date that OTS denies a timely request for hearing under § 585.140(a) following the issuance of an OTS order denying the application under § 585.130(b);

(iv) The date that the Director issues a decision under § 585.140(d); or

(v) The date an applicant withdraws the application.

§ 585.110 How do I apply for a case-by-case exemption?

(a) *Who may file.* (1) A savings and loan holding company or a person who was convicted of a criminal offense described in § 585.40 or who has agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense (''you'') may file an application seeking an OTS order granting an exemption from the prohibitions in this part.

(2) You may seek an exemption only for a designated position (or positions) with respect to a named savings and loan holding company.

(3) You may not file an application less than one year after the latter of the date of OTS's denial of the same exemption under § 585.130(b), § 585.140(a)(2) or § 585.140(d).

(b) *Application and review procedures.* You may seek OTS approval by filing your application with OTS under the standard treatment described in 12 CFR part 516, subpart A of this chapter. OTS will review your application under 12 CFR part 516, subpart E of this chapter (excluding 12 CFR 516.270 and 516.280).

(c) *Prohibition pending OTS action.* Unless you are exempt under § 585.100(b), the prohibitions in § 585.30 continue to apply pending OTS action on your application.

§ 585.120 What factors will OTS consider in reviewing my application?

(a) *OTS review.* (1) In determining whether to approve an exemption application filed under § 585.110, OTS will consider the extent to which the position that is the subject of your application enables a person to:

(i) Participate in the major policymaking functions of the savings and loan holding company; or

(ii) Threaten the safety and soundness of any insured depository institution that is controlled by the savings and loan holding company, the interests of its depositors, or the public confidence in the insured depository institution.

(2) OTS will also consider whether you have demonstrated the person's fitness to hold the described position. Some positions may be approved without an extensive review of a person's fitness because the position does not enable a person to take the actions described in paragraph (a)(1) of this section.

(b) *Factors.* In making the determinations under paragraph (a) of this section, OTS will consider the following factors:

(1) The position;

(2) The amount of influence and control a person holding the position will be able to exercise over the affairs and operations of the savings and loan holding company and the insured depository institution;

(3) The ability of the management of the savings and loan holding company to supervise and control the activities of a person holding the position;

(4) The level of ownership that the person will have at the savings and loan holding company;

(5) The specific nature and circumstances of the criminal offense. The question whether a person who was convicted of a crime or who agreed to enter into a pretrial diversion or similar program for a crime was guilty of that crime is not relevant;

(6) Evidence of rehabilitation; and

(7) Any other relevant factor.

§ 585.130 How will I know if my application is approved?

(a) *Approval.* If OTS approves your application, OTS will issue an approval order. An approval order will include a summary of the relevant factors that OTS considered under § 585.120, will require fidelity bond coverage for the position to the same extent as similar positions with the SLHC. The approval order may include such other conditions as may be appropriate.

(b) *Denial.* If OTS denies your application, OTS will issue a denial order. The denial order will include the following written information:

(1) A summary of the relevant factors that OTS considered under § 585.120; and

(2) A statement indicating that you may file a written request demonstrating good cause for a hearing on the denial of your application, and that you must file this request with OTS within 20 days of the date of issuance of the order.

§ 585.140 What procedures govern a hearing on my application?

(a) *OTS review of hearing request.* OTS will review your hearing request to determine if you have demonstrated good cause for a hearing on your application. Within 30 days after the filing of a timely request for a hearing, OTS will notify you in writing of its decision to grant or deny the hearing request. If OTS grants your request for a hearing, it will order a hearing to be commenced within 60 days of the issuance of the notification. Upon the request of a party, the OTS may order a later hearing date.

(b) *Hearing procedures.* Hearing procedures are set out at 12 CFR part 509, subpart D of this chapter.

Dated: April 30, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–8677 Filed 5–7–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26775; Directorate Identifier 2007–CE–01–AD; Amendment 39–15042; AD 2007–10–01]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Model AT–602 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Air Tractor, Inc. (Air Tractor) Model AT–602 airplanes. This AD requires you to install access holes to do repetitive detailed visual inspections for cracks in the horizontal stabilizer brace tube assembly, and if any cracks are found as a result of a visual inspection, to replace

the horizontal stabilizer brace tube assembly with a new design horizontal stabilizer brace tube assembly. The installation of the new design horizontal stabilizer brace tube assembly is terminating action for the repetitive inspection requirement. This AD results from two reports of Model AT–602 airplanes with cracked horizontal stabilizer brace tube assemblies. We are issuing this AD to detect and correct cracks in the horizontal stabilizer brace tube assembly, which could result in failure of the horizontal stabilizer. This failure could affect the ability to control pitch with consequent loss of control.

DATES: This AD becomes effective on June 12, 2007.

On June 12, 2007 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–26775; Directorate Identifier 2007–CE–01–AD.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

On January 31, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Model AT–602 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 6, 2007 (72 FR 5359). The NPRM proposed to require you to install access holes to do repetitive detailed visual inspections for cracks in the horizontal stabilizer brace tube assembly, and if any cracks are found as a result of a visual inspection, to replace the horizontal stabilizer brace tube assembly with a new design horizontal stabilizer brace tube assembly. The installation of the new design horizontal stabilizer brace tube assembly is terminating action for the repetitive inspection requirement.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 128 airplanes in the U.S. registry.

We estimate the following costs to do the installation of access holes to do visual inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	$5	$85	$10,880

We estimate the following costs to do each visual inspection for cracks of the horizontal stabilizer brace tube assembly:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators for initial inspection
1 work-hour × $80 per hour = $80	Not Applicable	$80	$10,240

We estimate the following costs to do any necessary replacement of the horizontal stabilizer brace tube assembly with a new design horizontal stabilizer brace tube assembly that will be required based on the results of the inspection or as the terminating action for the repetitive inspection requirement. We have no way of determining the number of airplanes that will need this replacement:

Labor cost	Parts cost	Total cost per airplane
35 work-hours × $80 per hour = $2,800	$896	$3,696

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–26775; Directorate Identifier 2007–CE–01–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding the following new AD:

2007–10–01 Air Tractor Inc.: Amendment 39–15042; Docket No. FAA–2006–26775; Directorate Identifier 2007–CE–01–AD.

Effective Date

(a) This AD becomes effective on June 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AT–602 airplanes, all serial numbers through 602–0695 that:

(1) Have horizontal stabilizer brace tube assembly, part number (P/N) 30012–7, installed; and

(2) Are certificated in any category.

Unsafe Condition

(d) This AD results from two reports of Model AT–602 airplanes with cracked horizontal stabilizer brace tube assemblies. We are issuing this AD to detect and correct cracks in the horizontal stabilizer brace tube assembly, which could result in failure of the horizontal stabilizer. This failure could affect the ability to control pitch with consequent loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Do the following: (i) Install access holes for visual inspection of the P/N 30012–7, horizontal stabilizer brace tube assembly. (ii) Conduct a detailed visual inspection for cracks in the P/N 30012–7 horizontal stabilizer brace tube assembly.	Install the access holes and do the initial inspection upon accumulating 2,000 hours time-in-service (TIS) or within the next 60 days after June 12, 2007 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. Replacement of the P/N 30012–7 horizontal stabilizer brace tube assembly with a new design P/N 30766–1 horizontal stabilizer brace tube assembly following paragraph (e)(2) of this AD is terminating action for the repetitive inspection requirement of this AD.	Follow Snow Engineering Co. Service Letter #235, dated August 25, 2004, revised October 24, 2006.
(2) Replace the P/N 30012–7 horizontal stabilizer brace tube assembly with a new design P/N 30766–1 horizontal stabilizer brace tube assembly.	Before further flight after any inspection required by paragraph (e)(1) of this AD where cracks are found. The installation of a new design P/N 30766–1 horizontal stabilizer brace tube assembly is terminating action for the repetitive inspection requirement of this AD.	Follow Snow Engineering Co. Service Letter #129A, dated August 7, 2004, revised November 15, 2005; Snow Engineering Co. Service Letter #235, dated August 25, 2004, revised October 24, 2006; and Snow Engineering Co. Drill Template—602, Drawing Number SL129–602, dated August 2, 2004.
(3) Do not install any P/N 30012–7 horizontal stabilizer brace tube assembly.	As of June 12, 2007 (the effective date of this AD).	Not Applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2006–26775; Directorate Identifier 2007–CE–01–AD.

Material Incorporated by Reference

(h) You must use Snow Engineering Co. Service Letter #129A, dated August 7, 2004, revised November 15, 2005; Snow Engineering Co. Service Letter #235, dated August 25, 2004, revised October 24, 2006; and Snow Engineering Co. Drill Template—602, Drawing Number SL129–602, dated August 2, 2004, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Air Tractor Inc., P.O. Box

485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on April 27, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8671 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28100; Directorate Identifier 2007–NM–103–AD; Amendment 39–15045; AD 2007–10–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This AD requires repetitive inspections to detect cracks in the horizontal stabilizer, and related investigative/corrective actions if necessary. This AD results from reports of cracks found in the horizontal stabilizer—in the upper and lower aft skin panels at the aft inboard corner at station XH = 8.2, and in the rear spar upper caps adjacent to the aft skin panel at station XH = 10.0. We are issuing this AD to detect and correct cracks in the upper and lower aft skin panels and rear spar upper caps, which, if not corrected, could lead to the loss of overall structural integrity of the horizontal stabilizer.

DATES: This AD becomes effective May 23, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 23, 2007.

We must receive comments on this AD by July 9, 2007.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We have received reports of cracks found in the horizontal stabilizer—in the upper and lower aft skin panels at the aft inboard corner at station XH = 8.2, and in the rear spar upper caps adjacent to the aft skin panel at station XH = 10.0. These cracks were found during maintenance visual inspections.

The cause of the cracking is still under investigation. If not corrected, the cracked upper and lower aft skin panels and rear spar upper caps could lead to the loss of overall structural integrity of the horizontal stabilizer.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007. The service bulletin describes procedures for repetitive low- and high-frequency eddy current inspections to detect cracks of the horizontal stabilizer's upper and lower aft skin panels and rear spar upper caps. The service bulletin provides options for corrective action based on crack length, location, and repairability; these options include some combination of the following actions:

- Stop drilling the end of the crack;
- Trimming the crack and installing a filler;
- Installing a skin panel splice or rear spar upper cap splice;
- Replacing the skin panel or rear spar upper cap with a new part; and
- Repeating the inspection of the cracked area (including aft skin panels, skin panel splice, and rear spar upper cap).

The repetitive inspection intervals, which range from 200 to 2,600 flight cycles, depend on the option used.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to detect and correct cracks in the upper and lower aft skin panels and rear spar upper caps, which, if not corrected, could lead to the loss of overall structural integrity of the horizontal stabilizer. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the Service Bulletin'' below.

Differences Between the AD and the Service Bulletin

The service bulletin specifies that any splice installed as part of a crack repair option be inspected within 20,000 flight cycles after the repair. But the service bulletin notes that the type, method, and repetitive interval for this inspection will be identified by Boeing at a later date. (See paragraph 1.E., note (a) of Tables 1 and 2 of the service bulletin.) To ensure continued safety, we have determined that this inspection and its repetitive interval must be adequately defined. Therefore, this AD requires that the inspection type, method, and repetitive interval be approved either by the FAA, or in accordance with data that meet the certification basis of the airplane and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

For a crack that meets the Condition 2 criteria specified in Table 1 or Table 3 in paragraph 1.E. of the service bulletin, Options 1 and 2 specify temporary repairs followed by repetitive inspections of the area, but provide no

terminating action for these repetitive inspections. In this case, this AD requires, within 4,000 flight cycles after the crack is detected, either installing a horizontal stabilizer aft skin panel splice or removing and replacing the horizontal stabilizer aft skin panel, in accordance with Option 3 or 4 of the applicable table, followed by the applicable repetitive inspections specified in Option 3 or 4. We have determined that this action is necessary to maintain the safety of the fleet.

We have coordinated these differences with Boeing.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2007–28100; Directorate Identifier 2007–NM–103–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–10–04 McDonnell Douglas: Amendment 39–15045. Docket No. FAA–2007–28100; Directorate Identifier 2007–NM–103–AD.

Effective Date

(a) This AD becomes effective May 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracks found in the horizontal stabilizer—in the upper and lower aft skin panels at the aft inboard corner at station XH = 8.2, and in the rear spar upper caps adjacent to the aft skin panel at station XH = 10.0. We are issuing this AD to detect and correct cracks in the upper and lower aft skin panels and rear spar upper caps, which, if not corrected, could lead to the loss of overall structural integrity of the horizontal stabilizer.

Compliance

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

Repetitive Inspections

(f) Do eddy current inspections to detect cracks in the horizontal stabilizer, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007.

(1) Do the initial inspections before the accumulation of 20,000 total flight cycles, or within 854 flight cycles after the effective date of this AD, whichever occurs later.

(2) Except as required by paragraphs (g) and (h) of this AD: Do all applicable repetitive inspections and related investigative and corrective actions in accordance with, and at the times specified in, the service bulletin.

Exceptions to Service Bulletin Specifications

(g) Where Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007, specifies inspecting any skin panel splice or cap splice installed as part of a crack repair

option: This AD requires the initial inspection within the compliance time specified in the service bulletin, but the inspection type, method, and repetitive interval must be done with FAA approval in accordance with the procedures specified in paragraph (i) of this AD.

(h) For airplanes on which any detected crack meets the Condition 2 criteria specified in Table 1 or Table 3 in paragraph 1.E. of Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007: If Option 1 or 2 is selected as the corrective action, either install a horizontal stabilizer aft skin panel splice or remove and replace the horizontal stabilizer aft skin panel within 4,000 flight cycles after accomplishing Option 1 or 2, in accordance with Option 3 or 4 of the applicable table, and repeat the inspection thereafter at the time specified in Option 3 or 4, as applicable.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8768 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27594; Airspace Docket No. 07–ASO–3]

Establishment of Class D and E Airspace; Aguadilla, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and E4 airspace at Aguadilla, PR. A Federal contract tower with a weather reporting system has been constructed at Rafael Hernandez Airport. Therefore, the airport meets criteria for Class D and E4 airspace. Class D and E4 surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class E and E4 airspace extending upward from the surface to and including 2,700 feet MSL within a 4.5-mile radius of the airport and within 2.4 miles each side of the Borinquen VORTAC 257° radial extending from the 4.5 mile radius to 7 miles west of the VORTAC.

DATES: Effective Date: 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Group Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (4040 305-5627.

SUPPLEMENTARY INFORMATION:

History

On March 30, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and E4 airspace at Aguadilla, PR, (72 FR 15077). This action provides adequate Class D and E4 airspace for IFR operations at Rafael Hernandez Airport. Designations for Class D and E4 Airspace are published in FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D and E4 airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D and E4 airspace at Aguadilla, PR.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace

Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO PR D Aguadilla, PR [NEW]

Rafael Hernandez Airport, PR
(Lat. 18°29′42″ N, long. 67°07′46″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.5-mile radius of the Rafael Hernandez Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6000 Class E Airspace.

* * * * *

ASO PR E4 Aguadilla, PR [NEW]

Rafael Hernandez Airport, PR
(Lat. 18°29′42″ N, long. 67°07′46″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Borinquen VORTAC 257° radial extending from the 4.5-mile radius to 7 miles west of the VORTAC. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on April 26, 2007.

Patricia Graham,

Acting Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–2250 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27262; Airspace Docket No. 07–ASO–1]

Amendment of Class E Airspace; Middlesboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Middlesboro, KY. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) A has been developed for Middlesboro—Bell County Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES Effective Date: 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark Ward, Manager, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On February 26, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Middlesboro, KY, (72 FR 8314). This action provides adequate Class E5 airspace for IFR operations at Middlesboro-Bell County Airport, Middlesboro, KY. Designations for Class E are published in FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Middlesboro, KY.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Middlesboro, KY [REVISED]

Middlesboro—Bell County Airport, KY
(Lat. 36°36′38″ N, long. 83°44′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Middlesboro—Bell County.

* * * * *

Issued in College Park, Georgia, on April 18, 2007.

Mark D. Ward,

Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–2248 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2007–28010, Airspace Docket No. 07–ANE–91]

Establishment of Class E Airspace; Dean Memorial Airport, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes a Class E airspace area at Dean Memorial

Airport, Haverhill, NH (K5B9) to provide for adequate controlled airspace for those aircraft using the new Area Navigation (RNAV) Instrument Approach Procedure to the Airport.

DATES: Effective 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before June 7, 2007.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2007–28010; airspace docket number, 07–ANE–91, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address states above.

An information docket may be examined during normal business hours in the FAA Eastern Service Center, by contacting the Manager, Systems Support, AJO–2E2, Federal Aviation Administration, Eastern Service Center, 1701 Columbia Ave, College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Systems Support, AJO–2E2, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA, 30337; telephone (404) 305–5570; fax (404) 305–5099.

SUPPLEMENTARY INFORMATION: A new Standard Instrument Approach Procedure (SIAP) to Dean Memorial Airport, Haverhill, NH (K5B9), RNAV (GPS) RWY 19, requires the establishment of Class E airspace extending upward from 700 feet above the surface in the vicinity of the airport. This action provides adequate controlled airspace to contain those aircraft executing the RNAV (GPS) approach. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does not receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA–public contract concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28010; Airspace Docket No. 07–ANE–91.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is non-controversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006 and effective

September 15, 2006, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE NH E5, Haverhill, NH [New]

Dean Memorial Airport, NH
(Lat. 44°04′48.62″ N, long. 72°00′27.93″ W)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Dean Memorial Airport and within 3.1 miles on each side of the Dean Memorial Airport 352° bearing extending from the 6.2-mile radius to 11.6 miles north of Dean Memorial Airport.

* * * * *

Issued in College Park, GA, on April 24, 2007.

Barry Knight,

Team Manager, System Support Group, AJO2–E2, Eastern Service Center.

[FR Doc. 07–2249 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 123

[CBP Dec. 07–25]

Advance Electronic Presentation of Cargo Information for Truck Carriers Required To Be Transmitted Through ACE Truck Manifest at Ports in the States of Idaho and Montana

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Pursuant to section 343(a) of the Trade Act of 2002 and implementing regulations, truck carriers and other eligible parties are required to transmit advance electronic truck cargo information to U.S. Customs and Border Protection (CBP) through a CBP-approved electronic data interchange. In a previous document, CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved interchange and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry. This document announces that at all land border ports in Idaho and Montana truck carriers will be required to file electronic manifests through the ACE Truck Manifest System.

DATES: Trucks entering the United States through land border ports of entry in the states of Idaho and Montana will be required to transmit the advance information through the ACE Truck Manifest system effective August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via e-mail at *james.d.swanson@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that CBP promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule to effectuate the provisions of the Act. In particular, a new § 123.92 (19 CFR 123.92) was added to the regulations to implement the inbound truck cargo provisions. Section 123.92 describes the general requirement that, in the case of any inbound truck required to report its arrival under § 123.1(b), if the truck will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, § 123.92 provides that CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

ACE Truck Manifest Test

On September 13, 2004, CBP published a notice in the **Federal Register** (69 FR 55167) announcing a test allowing participating Truck Carrier Accounts to transmit electronic manifest data for inbound cargo through ACE, with any such transmissions automatically complying with advance cargo information requirements as provided in section 343(a) of the Trade Act of 2002. Truck Carrier Accounts participating in the test were given the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange messaging.

A series of notices announced additional deployments of the test, with deployment sites being phased in as clusters. Clusters were announced in the following notices published in the **Federal Register**: 70 FR 30964 (May 31, 2005); 70 FR 43892 (July 29, 2005); 70 FR 60096 (October 14, 2005); 71 FR 3875 (January 24, 2006); 71 FR 23941 (April 25, 2006); 71 FR 42103 (July 25, 2006), 71 FR 77404 (December 26, 2006); 72 FR 7058 (February 14, 2007); and 72 FR 14127 (March 26, 2007).

CBP continues to test ACE at various ports. CBP will continue, as necessary, to announce in subsequent notices in the **Federal Register** the deployment of the ACE truck manifest system test at additional ports.

Designation of ACE Truck Manifest System as the Approved Data Interchange System

In a notice published October 27, 2006 (71 FR 62922), CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of required data and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry.

ACE will be phased in as the required transmission system at some ports even while it is still being tested at other ports. However, the use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test.

The October 27, 2006, document identified all land border ports in the states of Washington and Arizona and the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota as the first group of ports where use of the ACE Truck Manifest System is mandated. Subsequently, CBP announced on January 19, 2007 (72 FR 2435) that, after 90 days notice, the use of the ACE Truck Manifest System will be mandatory at all land border ports in the states of California, Texas and New Mexico. On February 23, 2007 (72 FR 8109), CBP announced that, after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in Michigan and New York. On April 13, 2007 (72 FR 18574), CBP announced that after 90 days notice at all land border ports in Vermont and New Hampshire, and at the land border ports in North Dakota in which ACE had

not been required, the ACE Truck Manifest System will be mandatory.

ACE Mandated at Land Border Ports of Entry in Idaho and Montana

Applicable regulations (19 CFR 123.92(e)) require CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Accordingly, CBP is announcing in this document that, effective 90 days from the date of publication of this notice, truck carriers entering the United States through land border ports of entry in the states of Idaho and Montana will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest System.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at the ports of entry announced in this document as of August 6, 2007.

Compliance Sequence

CBP will be publishing subsequent notices in the **Federal Register** as it phases in the requirement that truck carriers utilize the ACE system to present advance electronic truck cargo information at other ports. ACE will be phased in as the mandatory EDI system at the ports identified below in the sequential order in which they are listed. Although further changes to this order are not currently anticipated, CBP will state in future notices if changes do occur. In any event, as mandatory ACE is phased in at these remaining ports, CBP will always provide 90 days' notice through publication in the **Federal Register** prior to requiring the use of ACE for the transmission of advance electronic truck cargo information at a particular group of ports.

The remaining ports at which the mandatory use of ACE will be phased in, listed in sequential order, are as follows:

1. All land border ports in the state of Maine.

2. All land border ports in the states of Alaska and Minnesota.

Dated: May 2, 2007.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E7–8707 Filed 5–7–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD13–07–014]

RIN 1625–AA08

National Maritime Week Tugboat Races, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard will enforce the annual National Maritime Week Tugboat Races Special Local Regulations in Elliot Bay from 12 p.m. to 4:30 p.m. on May 12, 2007. This action is necessary to ensure the safety of participants and spectators during the National Maritime Week Tugboat Races. During the enforcement period, entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: The regulations in 33 CFR 100.1306 will be enforced from 12 p.m. to 4:30 p.m. on May 12, 2007.

FOR FURTHER INFORMATION CONTACT: Lieutenant Steve Kee, c/o Captain of the Port Puget Sound, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6002.

SUPPLEMENTARY INFORMATION: On May 6, 2005, the Coast Guard published a final rule (70 FR 23936–23938) modifying the regulations in 33 CFR 100.1306 for the safe execution of the Seattle Maritime Festival Tugboat Races on the waters of Elliot Bay. This Special Local Regulation (SLR) provides for a regulated area to protect spectators while providing unobstructed vessel traffic lanes to ensure timely arrival of emergency response craft. Movements are regulated for all vessels in the area as described under 33 CFR 100.1306 or unless otherwise regulated by the Captain of the Port or his designee. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this SLR. The Coast Guard will enforce the SLR for the annual National Maritime Week Tugboat Races, Seattle, WA in 33 CFR 100.1306 on May 12, 2007, from 12 p.m. to 4:30 p.m.

Under the provisions of 33 CFR 100.1306, entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designee. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of race participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1306(c) and 5 U.S.C. 552(a).

Dated: April 20, 2007.

Mark J. Huebschman,

Commander, U.S. Coast Guard, Captain of the Port, Puget Sound, Acting.

[FR Doc. E7–8727 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–07–015]

RIN 1625–AA00

Security Zone: Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of Rose Festival Security Zone.

SUMMARY: The Captain of the Port Portland, Oregon will begin enforcing the Portland Rose Festival Security Zone from June 6th, 2007 until June 11, 2007. This zone provides for the security of public vessels on a portion of the Willamette River during the fleet week of the 2007 Rose Festival.

DATES: This notice of enforcement for 33 CFR 165.1312 will be enforced from 12:01 a.m., June 6, 2007 until 11:59 p.m., June 11, 2007.

FOR FURTHER INFORMATION CONTACT: Petty Officer Michelle Duty , c/o Captain of the Port Portland, OR, 6767 North Basin Avenue, Portland, OR 97217 at (503) 240–9301 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On May 29, 2003, the Coast Guard published a final rule (68 FR 31979 as amended by 70 FR 33352 published on June 8, 2005) establishing a security zone, in 33 CFR 165.1312, for the security of public

vessels on a portion of the Willamette River during the fleet week of the Rose Festival. This security zone provides for the regulation of vessel traffic in the vicinity of the moored vessels. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will begin enforcing the Rose Festival Security Zone established by 33 CFR 165.1312 on June 6, 2007. The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing this security zone. This security zone will be enforced until June 11, 2007.

Dated: April 20, 2007.

Patrick G. Gerrity,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. E7–8725 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2006–0817; FRL–8309–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Parkersburg, WV, Portion of the Parkersburg-Marietta, WV-OH 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Parkersburg, West Virginia (Parkersburg) portion of the Parkersburg-Marietta, WV-OH area (herein referred to as the ''Area'') be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the State submitted a SIP revision consisting of a maintenance plan for Parkersburg that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years, until 2018. Concurrently, EPA is approving the maintenance plan as meeting the requirements of Clean Air Act (CAA) 175A(b) with respect to the 1-hour ozone maintenance plan update. EPA is also approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Parkersburg 8-hour maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request and the maintenance plan revision to the West Virginia SIP in accordance with the requirements of the CAA.

DATES: *Effective Date:* This final rule is effective on June 7, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2006–0817. All documents in the docket are listed in the *www.regulations.gov* website. 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 through *www.regulations.gov* 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 12, 2007 (72 FR 1474), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of West Virginia's redesignation request and a SIP revision that establishes a maintenance plan for Parkersburg that sets forth how Parkersburg will maintain attainment of the 8-hour ozone NAAQS for the next 12 years. The formal SIP revision was submitted by the WVDEP on September 8, 2006. Other specific requirements of West Virginia's redesignation request SIP revision for the maintenance plan and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here.

On February 9, 2007, EPA received a comment, from the West Virginia Manufacturers Association, in support of its January 12, 2007 NPR. Also, on February 15, 2007, EPA received a comment, from the West Virginia Chamber of Commerce, in support of its January 12, 2007 NPR. EPA recognizes the support provided in these comments but does not believe any specific response to comments is necessary with respect to these comments.

Additionally, the United States Court of Appeals for the District of Columbia Circuit recently vacated EPA's April 30, 2004 ''Final Rule to Implement the 8-Hour Ozone National Ambient Standard'' (the Phase 1 implementation rule). *South Coast Air Quality Management District* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2007). EPA issued a supplemental proposed rulemaking that set forth its views on the potential effect of the Court's ruling on this and other proposed redesignation actions. 72 FR 13452 (March 22, 2007). EPA proposed to find that the Court's ruling does not alter any requirements relevant to the proposed redesignations that would prevent EPA from finalizing these redesignations, for the reasons fully explained in the supplemental notice. EPA provided a 15-day review and comment period on this supplemental proposed rulemaking. The public comment period closed on April 6, 2007. EPA received six comments, all supporting EPA's supplemental proposed rulemaking, and supporting redesignation of the affected areas. EPA recognizes the support provided in these comments as well, but again, we do not believe any specific response to comments is necessary with respect to these comments. In addition, several of these comments included additional rationale for proceeding with these proposed redesignations. EPA had not requested comment on any additional rationale, does not believe any additional rationale is necessary, and similarly does not believe any specific response to these comments is necessary, and thus has not provided any.

II. Final Action

EPA is approving the State of West Virginia's September 8, 2006 redesignation request and maintenance plan because the requirements for approval have been satisfied. EPA has evaluated West Virginia's redesignation request, submitted on September 8, 2006, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that Parkersburg has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Parkersburg, West Virginia portion of the Area from nonattainment to attainment for the 8-

hour ozone standard. EPA is approving the associated maintenance plan for Parkersburg, submitted on September 8, 2006, as a revision to the West Virginia SIP. EPA is approving the maintenance plan for Parkersburg because it meets the requirements of section 175A and 175A(b) with respect to the 1-hour ozone maintenance plan update. EPA is also approving the MVEBs submitted by West Virginia in conjunction with its redesignation request. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_X and VOCs in the Parkersburg portion of the 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, Wood County must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs are provided in the following table:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS (MVEBS) IN TONS PER DAY (TPD)

Budget year	NO_X	VOC
2009	4.1	3.0
2018	2.0	1.9

Parkersburg is subject to the CAA's requirements for basic ozone nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this final 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 final rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 affects the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final rule also is not subject to Executive Order 13045 (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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

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. 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).

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 July 9, 2007. 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, to approve the redesignation request, maintenance plan and adequacy determination for MVEBs for Parkersburg, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Nitrogen Dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 26, 2007.

Judith Katz,

Acting Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan, Parkersburg-Marietta, WV-OH Area at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan for the Parkersburg-Marietta, WV-OH Area.	Wood County	09/08/06	05/08/07 [Insert page number where the document begins].	

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.349 the table entitled ''West Virginia—Ozone (8-Hour Standard)'' is amended by revising the entry for the Parkersburg-Marietta, WV-OH Area to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—OZONE

[8-Hour Standard]

Designated Area	Designation [a]		Category/Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Parkersburg-Marietta, WV-OH Area Wood County	05/08/07	Attainment.		
*	*	*	*	*

[a] Includes Indian country located in each county or area except otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E7–8678 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0677a; FRL–8303–2]

Revisions to the Nevada State Implementation Plan, Washoe County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Washoe County portion of the Nevada State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from fugitive dust sources, such as open areas, unpaved roads, and construction activities. We are approving this local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 9, 2007 without further notice, unless EPA receives adverse comments by June 7, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0677a, by one of the following methods:

1. *Federal eRulemaking Portal*: *www.regulations.gov*. Follow the on-line instructions.

2. *E-mail*: *steckel.andrew@epa.gov*.

3. *Mail or deliver*: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule we are approving with the date that it was adopted by Washoe County and submitted by Nevada.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
Washoe Co	040.030	Dust Control	07/26/02	08/05/02

On February 5, 2003, this Rule 040.030 submittal became complete by operation of law because EPA did not make a formal finding that it met the completeness criteria in 40 CFR part 51 Appendix V. These criteria must be met before formal EPA review may begin.

B. Are there other versions of this rule?

We approved a prior version of this rule into the Nevada SIP on July 27, 1972; please see 37 **Federal Register** (FR) 15086. On October 30, 1991, Nevada submitted a revised version of Regulation 040.030 to EPA as part of its moderate PM–10 nonattainment area plan. Nevada submitted additional revisions to Regulation 040.030 to EPA on September 18, 1992, and March 25, 1994, as ''addenda'' to its moderate PM–10 area nonattainment plan. EPA did not act on these submitted versions of the rule, but they have been in effect under state law since their adoption.

C. What is the purpose of the submitted rule revision?

Washoe County Regulation 040.030—Dust Control is designed to limit the emissions of fugitive dust or particulate matter from a variety of activities and sources such as construction sites, bulk material hauling, unpaved parking lots, and disturbed soil in open areas and vacant lots. Regulation 040.030 is a significant part of the Washoe County serious area PM–10 attainment plan control strategy for the Truckee Meadows Air Basin (TMAB). The Washoe County serious area PM–10 attainment plan (submitted August 2002) identified fugitive dust from construction activity and disturbed land as significant sources of PM–10 emissions. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action.

A. How is EPA evaluating the rule?

On January 8, 2001, EPA determined TMAB had failed to attain the annual and 24-hour PM–10 standards by the statutory deadline of December 31, 1994 based on monitored air quality data during the years 1992–94. Consequently, the area was reclassified under CAA 188(b)(2) by operation of law as a serious nonattainment area, effective February 7, 2001. See 66 FR 1268 (January 8, 2001). States containing initial moderate PM–10 nonattainment areas that are reclassified as serious under CAA section 188(b)(2) are required under section 189(b)(2) to submit a serious PM–10 nonattainment plan within 18 months of the reclassification. A serious PM–10 nonattainment plan must provide for, among other things, implementation of best available control measures (BACM), including best available control technology (BACT). Also, SIP rules must be enforceable (see section 110(a) of the Act) and must not interfere with existing requirements contributing towards meeting air quality standards (section 110(l)) or relax control requirements existing before November 15, 1990 (see section 193). We have listed below the guidance and policy documents that we used to evaluate this rule for enforceability, RACM, and BACM requirements.

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency'', September 23, 1987.
3. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
4. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
5. ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 13498, April 16, 1992.
6. ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 18070, April 28, 1992.
7. ''Fugitive Dust Background Document and Technical Information Document for Best Available control Measures,'' EPA 450/2–92–004, September 1992.
8. General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 59 FR 41998, August 16, 1994.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, BACM, and SIP relaxations. Regulation 040.030 contains specific well-defined requirements that are enforceable. The rule also contains new control measures that achieve substantially greater emission reductions compared to the 1972 rule in the SIP. Consequently, EPA finds that the submitted rule does not interfere with progress toward air quality standards and does not relax any SIP control requirements existing before November 15, 1990. The TSD provides more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

We have no recommendations.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it

fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 7, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 9, 2007. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2007. 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) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 15, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

Editorial Note: This document was received at the Office of the Federal Register on May 2, 2007.

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

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(55)(i)(A)(*2*) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(55) * * *

(i) * * *

(A) * * *

(*2*) Regulation 040.030 adopted on July 26, 2002.

* * * * *

[FR Doc. E7–8695 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0635; FRL–8308–2]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Visible Emissions and Particulate Matter Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing full approval of revisions to the Nevada Department of Conservation and Natural Resources portion of the Nevada State Implementation Plan (SIP). This action was proposed in the **Federal Register** on March 12, 2007 (72 FR 10960), and approves amended visible emissions and particulate matter regulations as well as requests for rescission of certain regulations related to visible emissions and particulate matter. The intended effect is to approve regulations for inclusion into the applicable plan and to rescind unnecessary provisions from the applicable plan. We are approving these regulations and rescissions in order to regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act) and to update the applicable SIP.

DATES: *Effective Date:* This rule is effective on June 7, 2007.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2006–0635 for this action. The index to the docket is available electronically at *http://regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On March 12, 2007 (72 FR 10960), EPA proposed approval of the provisions of chapter 445B of the Nevada Administrative Code (NAC) listed below.

TABLE 1.—AMENDED RULES SUBMITTED FOR APPROVAL INTO THE SIP

NAC No.	NAC title	Adopted	Submitted
445B.22017	Visible emissions: Maximum opacity; determination. (Effective April 1, 2006.)	10/04/05	01/12/06
445B.2202	Visible emissions: Exceptions for stationary sources. (Effective April 1, 2006.)	10/04/05	01/12/06
445B.22027	Emissions of particulate matter: Maximum allowable throughput for calculating emissions rates	01/22/98	01/12/06
445B.2203	Emissions of particulate matter: Fuel-burning equipment	09/09/99	01/12/06
445B.22033	Emissions of particulate matter: Sources not otherwise limited	01/22/98	01/12/06
445B.22037	Emissions of particulate matter: Fugitive dust	10/03/95	01/12/06

Table 2 lists two related rules in the existing SIP for which the Nevada Division of Environmental Protection (NDEP) has requested rescission. On March 12, 2007 we also proposed to approve these rescissions, deleting these rules from the applicable SIP.

TABLE 2.—RELATED SIP RULES FOR WHICH THE STATE HAS REQUESTED RESCISSION

SIP provision	Title	Submittal date	Approval date
NAQR Article 16.3.3.1	Opacity from kilns	12/29/78	06/18/82
NAC 445.535	Kilogram-calorie	10/26/82	03/27/84

We proposed to approve these regulations and rescissions because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the regulations and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from Jennifer L. Carr, Chief, Bureau of Air Quality Planning, Nevada Division of Environmental Protection (NDEP), by letter dated April 10, 2007. In its comment letter, NDEP calls for correction of two specific errors found in EPA's Technical Support Document (TSD) (dated February 9, 2007) for the proposed rule. With respect to the first error noted by NDEP, we agree that the correct effective date for the second of the three submitted versions of NAC 445B.2202 is March 1, 2006, not March 2, 2006 as incorrectly cited in the TSD. With respect to the second error, we agree that the correct units for power plant particulate matter emissions standards under the applicable NSPS are ''lb/MMBtu,'' not ''MMBtu/hour'' as incorrectly cited in the TSD. While we agree with the technical corrections identified by the commenter, they do not substantively affect the basis for our action.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) of the Act, EPA is finalizing the approval of the provisions listed in Table 1 and also finalizing the approval of the rescission requests for the provisions listed in Table 2. This action incorporates the six submitted rules into the federally-enforceable SIP [1] and rescinds NAQR Article 16.3.3.1 and NAC 445.535 therefrom.

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

[1] Final approval of these rules supersedes the following rules in the applicable SIP (superseding rule shown in parentheses): NAC 445.721 (NAC 445B.22017); NAQR Article 4.3, 4.3.1, 4.3.2, 4.3.3 and 4.3.5 (NAC 445B.2202); NAC 445.731 (NAC 445B.2203), NAC 445.732 (NAC 445B.22033), and NAC 445.734 (NAC 445B.22037). NAC 445.729 is not superseded by the corresponding submitted rule NAC 445B.22027 because the former is relied upon by certain SIP rules (e.g., NAC 445.730) that are being retained in the SIP.

22, 2001). This action merely approves state rules 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 state rules 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 approves a state rule implementing a Federal standard.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 19, 2007.

Jane Diamond,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by:

■ a. Adding paragraphs (c)(14)(x) and (c)(25)(iv);

■ b. Revising paragraphs (c)(56)(i)(A)(*3*)(*i*), (*ii*), and (*iii*); and

■ c. Adding paragraph (c)(56)(i)(A)(*3*)(*viii*) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(14) * * *

(x) Previously approved on June 18, 1982 in paragraph (c)(14)(viii) of this section and now deleted without replacement: Article 16: Rules 16.3.3.1.

* * * * *

(25) * * *

(iv) Previously approved on March 27, 1984 in paragraph (c)(25)(i)(A) of this section and now deleted without replacement: Nevada Administrative Code (NAC) section: 445.535.

* * * * *

(56) * * *

(i) * * *

(A) * * *

(*3*) * * *

(*i*) October 3, 1995: 445B.005, 445B.059, 445B.077, 445B.112, 445B.116, 445B.130, 445B.145, 445B.152, 445B.177, 445B.180, and 445B.22037.

(*ii*) January 22, 1998: 445B.011, 445B.0425, 445B.058, 445B.22027, and 445B.22033.

(*iii*) September 9, 1999: 445B.2203 and 445B.22047.

* * * * *

(*viii*) October 4, 2005: 445B.22017 (effective April 1, 2006) and 445B.2202 (effective April 1, 2006).

* * * * *

[FR Doc. E7–8693 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0827; FRL–8302–9]

Revisions to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). This revision concerns particulate matter (PM–10) emissions from open burning. We are approving a local rule under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 9, 2007 without further notice, unless EPA receives adverse comments by June 7, 2007. If we receive such comments, we will publish a timely withdrawal in the

Federal Register to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0827, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule we are approving with the dates that the rule was amended by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Revised	Submitted
MCESD	314	Open Outdoor Fires	04/20/05	06/08/06

On December 7, 2006, the submittal of MCESD Rule 314 was determined by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

A version of MCESD Rule 314 was approved into the SIP on August 12, 2002 (67 FR 52416).

C. What are the purposes of the submitted rule revision?

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of local air districts' programs to control these pollutants.

The purposes of the submitted MCESD Rule 314 revision are as follows:

- *(314.200)*: The rule revises various definitions in order to improve clarity.
- *(314.302.6 and 314.302.7)*: The rule adds the requirements that an air curtain destructor (a) be used to burn vegetative material greater than 6 inches diameter and (b) not operate closer than 500 feet from the nearest dwelling.
- *(314.402.3 and 314.402.4)*: The rule adds the requirements that (a) a permittee must comply with the regulations of the local fire agency and (b) Maricopa County must obtain a permit for its own burning from ADEQ.

EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules in serious PM–10 nonattainment areas must require for significant sources best available control measures (BACM), including best available control technology (BACT) (see section 189(b)). MCESD regulates a serious PM–10 nonattainment area (see 40 CFR part 81), so MCESD Rule 314 must fulfill the requirements of BACM/BACT.

Guidance and policy documents that we used to help evaluate rules consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document* (EPA–452/R–93–008).

B. Does the rule meet the evaluation criteria?

We believe MCESD Rule 314 is consistent with the relevant policy and guidance regarding enforceability, BACM/BACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by June 7, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not

receive timely adverse comments, the direct final approval will be effective without further notice on July 9, 2007. This will incorporate the rule into the federally enforceable SIP.

III. 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 approves a state rule implementing a Federal standard.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 23, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(135) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(135) An amended regulation was submitted on June 8, 2006, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 314, adopted on July 13, 1988 and amended on April 20, 2005.

* * * * *

[FR Doc. E7–8689 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0249; FRL–8310–6]

Approval and Promulgation of Implementation Plans; Missouri; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is revising the Missouri State Implementation Plan (SIP) for the purpose of approving the Missouri Department of Natural Resources' (MDNR) actions to address requirements of section 110(a)(2)(D)(i) of the Clean Air Act. Section 110(a)(2)(D)(i) requires each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. MDNR has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, interference with plans in

another state to prevent significant deterioration of air quality, and interference with efforts of other states to protect visibility. The requirements for public notification were also met by MDNR.

DATES: This direct final rule will be effective July 9, 2007, without further notice, unless EPA receives adverse comment by June 7, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0249, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: hamilton.heather@epa.gov.*
3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0249. 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.regulations.gov,* 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 *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.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 *http://www.regulations.gov* index. 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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 p.m. to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

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

What is being addressed in this document?
What action is EPA taking?

What is being addressed in this document?

EPA is revising the SIP for the purpose of approving MDNR's actions to address the requirements of the Clean Air Act (CAA) section 110(a)(2)(D)(i). In its request to revise the SIP, Missouri has also outlined the other provisions of section 110(a)(2) (the infrastructure SIP, to support the implementation, maintenance and enforcement of the NAAQS) and described how the state implements the infrastructure requirements. In this rule, EPA is only acting on the portion of the SIP addressing section 110(a)(2)(D)(i). EPA is taking separate action on this portion of the submission because EPA is obligated to promulgate a Federal plan if the state plan is not approved by May 27, 2007. EPA intends to act on the other portion of the submission in the near future.

Section 110(a)(2)(D)(i) requires each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS in another state, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

The EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section 110(a)(2)(D)(i). As discussed below, Missouri's analysis of its SIP with respect to the statutory requirements is consistent with the guidance.

The MDNR has addressed the first two of these elements by the adoption of the Clean Air Interstate Rule (CAIR) model rules that require Missouri sources to participate in the EPA-administered cap and trade program for nitrogen oxides (NO_X) and sulfur dioxide. Participation in this program will prohibit emissions from the state that would contribute significantly to nonattainment or interfere with the maintenance of the particulate matter and ozone NAAQS in any downwind state. As previously determined by EPA, submittal of a SIP revision to satisfy CAIR (submitted to EPA on March 13, 2007) also fulfills the state's obligations that pertain to ''significant contribution'' and ''interference with maintenance'' (70 FR 25162). It should be noted that EPA will act on Missouri's CAIR SIP in a separate rulemaking, and this action makes no conclusion with respect to approvability of that submittal.

The third element MDNR addressed was prevention of significant deterioration (PSD). For 8-hour ozone, the state has met the obligation, consistent with EPA's guidance described previously, by confirming that major sources in the state are currently subject to PSD programs that implement the 8-hour ozone standard and that the state is on track to meet the June 15, 2007, deadline for SIP submissions adopting any relevant requirements of the Phase II ozone implementation rule. For $PM_{2.5}$, the state has confirmed that the state's PSD program is being implemented in accordance with EPA's interim guidance calling for the use of PM_{10} as a surrogate for $PM_{2.5}$ for the purposes of PSD and nonattainment New Source Review (NSR). Controlling PM_{10} emissions and analyzing impacts on the environment serves as a surrogate approach for reducing $PM_{2.5}$ emissions

and minimizing impacts to air quality. Although EPA has finalized major portions of the $PM_{2.5}$ implementation rule, we have not yet finalized the portion relating to New Source Review. Once the NSR portion of the $PM_{2.5}$ implementation rule is finalized by EPA, MDNR commits to transitioning from use of the interim $PM_{2.5}$ guidance to the final $PM_{2.5}$ implementation requirements after approval of the $PM_{2.5}$ SIP revision (The submittal is due April 5, 2008).

It should be noted that most of Missouri is currently designated attainment/unclassifiable for both the 8-hour ozone and $PM_{2.5}$ NAAQS. However, St. Louis City, St. Louis County, St. Charles County, Franklin County, and Jefferson County are designated as nonattainment for the 8-hour ozone and annual fine particulate matter NAAQS.

At this time, it is not possible for MDNR to accurately determine whether there is interference with measures in another state's SIP designed to protect visibility, which is the fourth element that was addressed. Technical projects relating to visibility degradation source-receptor relationships are under development. Missouri will be in a more advantageous position to address the visibility projection requirements once the initial regional haze SIP has been developed. MDNR intends to meet the December 17, 2007, submittal deadline for the regional haze SIP.

A public hearing with regard to this action was held by the state, and only EPA provided comments on this SIP revision.

With this action, the non-regulatory text in 40 CFR 52.1320(e) is revised to reflect that MDNR addressed the elements of the CAA section 110(a)(2)(D)(i).

What action is EPA taking?

The EPA is taking direct final action to approve this revision as MDNR has adequately addressed the required elements of CAA section 110(a)(2)(D)(i). EPA intends to act on the portion of Missouri's submittal addressing all other elements of section 110(a)(2), which addresses the infrastructure necessary to implement the 8-hour ozone and $PM_{2.5}$ NAAQS in the state of Missouri, in a future rulemaking.

Please note that if EPA receives adverse comment on part of this rule, and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action 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 action 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 action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action 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 approves a state rule implementing a Federal standard.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 30, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(e) the table is amended by adding an entry in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(51) CAA 110(a)(2)(D)(i) SIP—Interstate Transport	Statewide	2/27/07	5/8/07 [insert FR page number where the document begins].	

[FR Doc. E7–8774 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2007–0258; FRL–8310–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Iowa, Kansas, and Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Other Solid Waste Incineration (OSWI) section 111(d) negative declarations submitted by the states of Iowa, Kansas, and Missouri. These negative declarations certify that OSWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in these states.

DATES: This direct final rule will be effective July 9, 2007, without further notice, unless EPA receives adverse comment by June 7, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0258, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. *E-mail: hamilton.heather@ep.gov.*
3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier.* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0258. 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.regulations.gov*, 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 *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.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 *http://www.regulations.gov* index. 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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

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

What is a 111(d) Plan?
What are the regulatory requirements for OSWI units?
Why is this action necessary?
What action are we taking in this document?

What is a 111(d) Plan?

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources for certain designated pollutants.

What are the regulatory requirements for OSWI units?

On December 16, 2005 (70 FR 74870), EPA finalized the section 111(d) emission guidelines for existing OSWI units. The emission guidelines are codified at 40 CFR part 60, subpart EEEE.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Part 62 of the CFR provides the procedural framework for the submission of these plans. When designated facilities are located in a state, a state must develop and submit a plan for the control of the designated pollutant. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B for that designated pollutant.

Why is this action necessary?

The states of Iowa, Kansas, and Missouri have determined there are no existing sources in their states subject to the OSWI emission guidelines. Consequently, each state has submitted a letter of negative declaration certifying this fact. We are announcing our approval of these negative declarations. If at a later date such sources are identified, they will be subject to a Federal plan until a state has an approved 111(d) plan.

What action are we taking in this document?

We are processing this action as a direct final action because we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision is severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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 negative declarations as meeting Federal requirements and imposes no additional requirements. 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 state negative declarations and does not impose any additional enforceable duty, 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 state negative declarations relating to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it merely approves state negative declarations relating to a Federal standard.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2007. Filing a petition for reconsideration by the Administrator of this direct 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 62

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Intergovernmental relations, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal.

Dated: April 30, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart Q—Iowa

■ 2. Subpart Q is amended by adding an undesignated center heading and § 62.3917 to read as follows:

Air Emissions From Existing ''Other'' Solid Waste Incineration Units

§ 62.3917 Identification of plan—negative declaration.

Letter from the Iowa Department of Natural Resources submitted March 8,

2007, certifying that there are no commercial and industrial solid waste incineration units subject to 40 CFR part 60, subpart EEEE.

Subpart R—Kansas

■ 3. Subpart R is amended by adding an undesignated center heading and § 62.4182 to read as follows:

Air Emissions From Existing ''Other'' Solid Waste Incineration Units

§ 62.4182 Identification of plan—negative declaration.

Letter from the Kansas Department of Health and Environment submitted December 7, 2006, certifying that there are no ''other'' solid waste incineration units subject to 40 CFR part 60, subpart EEEE.

Subpart AA—Missouri

■ 4. Subpart AA is amended by adding an undesignated center heading and § 62.6361 to read as follows:

Air Emissions From Existing ''Other'' Solid Waste Incineration Units

§ 62.6361 Identification of plan—negative declaration.

Letter from the Missouri Department of Natural Resources submitted April 7, 2006, certifying that there are no ''other'' solid waste incineration units subject to 40 CFR part 60, subpart EEEE.

[FR Doc. E7–8807 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2007–0322; FRL–8309–7]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona, Arizona Department of Environmental Quality; State of Nevada, Nevada Division of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants (NESHAP) in Arizona and Nevada. Several NESHAP were delegated to the Arizona Department of Environmental Quality on March 16, 2007, and to the Nevada Division of Environmental Protection on January 12, 2007. The purpose of this action is to update the listing in the Code of Federal Regulations.

DATES: This rule is effective on July 9, 2007 without further notice, unless EPA receives adverse comments by June 7, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0322, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or delivery:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Background

A. Delegation of NESHAP

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to state or local air pollution control agencies the authority to implement and enforce the standards set out in the Code of Federal Regulations, Title 40 (40 CFR), Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR Part 63, Subpart E (hereinafter referred to as ''Subpart E''), establishing procedures for EPA's approval of state rules or programs under section 112(l) (see 58 FR 62262). Subpart E was later amended on September 14, 2000 (see 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and Subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

B. ADEQ Delegations

On July 17, 1998, EPA published a direct final action delegating to the Arizona Department of Environmental Quality (ADEQ) several NESHAP and approving ADEQ's delegation mechanism for future standards (see 63 FR 38478). That action explained the procedure for EPA to grant future delegations to ADEQ by letter, with periodic **Federal Register** listings of standards that have been delegated. On February 21, 2007, ADEQ requested delegation of the following NESHAP contained in 40 CFR Part 63:

- Subpart J—NESHAP for Polyvinyl Chloride and Copolymers Production
- Subpart MM—NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
- Subpart XX—National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
- Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
- Subpart QQQ—National Emission Standards for Primary Copper Smelting
- Subpart RRR—National Emission Standards for Secondary Aluminum Production
- Subpart UUU—National Emission Standards for Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Plan Units
- Subpart VVV—NESHAP: Publicly Owned Treatment Works
- Subpart AAAA—National Emission Standards for Municipal Solid Waste Landfills
- Subpart CCCC—National Emission Standards for Manufacturing of Nutritional Yeast
- Subpart EEEE—National Emission Standards for Organic Liquids Distribution (Non-Gasoline)
- Subpart FFFF—NESHAP: Miscellaneous Organic Chemical Manufacturing
- Subpart GGGG—National Emission Standards for Solvent Extraction for Vegetable Oil Production
- Subpart HHHH—National Emission Standards for Wet-Formed Fiberglass Mat Production
- Subpart IIII—NESHAP: Surface Coating of Automobiles and Light–Duty Trucks
- Subpart JJJJ—NESHAP: Paper and Other Web Coating
- Subpart KKKK—NESHAP: Surface Coating of Metal Cans
- Subpart MMMM—NESHAP for Surface Coating of Miscellaneous Metal Parts and Products
- Subpart NNNN—National Emission Standards for Large Appliances
- Subpart OOOO—NESHAP: Printing, Coating, and Dyeing of Fabrics and Other Textiles
- Subpart PPPP—NESHAP for Surface Coating of Plastic Parts and Products
- Subpart QQQQ—National Emission Standards for Wood Building Products
- Subpart RRRR—National Emission Standards for Surface Coating of Metal Furniture
- Subpart SSSS—National Emission Standards for Surface Coating of Metal Coil
- Subpart TTTT—National Emission Standards for Leather Finishing Operations
- Subpart UUUU—National Emission Standards for Cellulose Products Manufacturing
- Subpart VVVV—National Emission Standards for Boat Manufacturing
- Subpart WWWW—National Emission Standards for Reinforced Plastics Composites Production
- Subpart XXXX—National Emission Standards for Tire Manufacturing
- Subpart YYYY—NESHAP for Stationary Combustion Turbines
- Subpart ZZZZ—NESHAP for Stationary Reciprocating Internal Combustion Engines
- Subpart AAAAA—NESHAP for Lime Manufacturing Plants
- Subpart BBBBB—National Emission Standards for Semiconductor Manufacturing
- Subpart CCCCC—National Emission Standards for Coke Ovens: Pushing, Quenching, and Battery Stacks
- Subpart EEEEE—NESHAP for Iron and Steel Foundries
- Subpart FFFFF—National Emission Standards for Integrated Iron and Steel
- Subpart GGGGG—NESHAP: Site Remediation
- Subpart HHHHH—NESHAP: Miscellaneous Coating Manufacturing
- Subpart IIIII—NESHAP: Mercury Emissions from Mercury Cell Chlor-Alkali Plants
- Subpart JJJJJ—National Emission Standards for Brick and Structural Clay Products Manufacturing
- Subpart KKKKK—NESHAP for Clay Ceramics Manufacturing
- Subpart LLLLL—National Emission Standards for Asphalt Roofing and Processing
- Subpart MMMMM—National Emission Standards for Flexible Polyurethane Foam Fabrication Operations
- Subpart NNNNN—NESHAP: Hydrochloric Acid Production
- Subpart PPPPP—National Emission Standards for Engine Test Cells/Stands
- Subpart QQQQQ—National Emission Standards for Friction Products Manufacturing
- Subpart RRRRR—NESHAP: Taconite Iron Ore Processing
- Subpart SSSSS—National Emission Standards for Refractory Products Manufacturing
- Subpart TTTTT—NESHAP for Primary Magnesium Refining

On March 16, 2007, EPA granted delegation to ADEQ for these NESHAP, along with any amendments to previously-ndash;delegated NESHAP, as of July 1, 2004. Today's action is serving to notify the public of the March 16, 2007, delegation and to codify these delegations into the Code of Federal Regulations.

ADEQ also included a request for delegation of the federal List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List codified at 40 CFR Part 63, Subpart C. This Subpart does not need to be delegated under the Clean Air Act section 112(l) approval process. EPA does not delegate to state or local agencies the authority to make changes to this federal list of pollutants, and Subpart C does not contain any provisions or authorities requiring implementation by state or local agencies. As a result, EPA is not taking action to delegate 40 CFR Part 63, Subpart C or its amendments to ADEQ.

C. NDEP Delegations

On May 27, 1998, EPA published a direct final action delegating to the Nevada Division of Environmental Protection (NDEP) several NESHAP and approving NDEP's delegation mechanism for future standards (see 63 FR 28906). That action explained the procedure for EPA to grant delegations to NDEP by letter, with periodic **Federal Register** listings of standards that have been delegated. On October 26, 2006, NDEP requested delegation of the NESHAP for Plywood and Composite Wood Products, 40 CFR part 63, subpart DDDD.

On January 12, 2007, EPA granted delegation to NDEP for this NESHAP, along with any amendments to previously-ndash;delegated NESHAP, as of July 1, 2006. Today's action is serving to notify the public of the January 12, 2007, delegations and to codify these delegations into the Code of Federal Regulations.

NDEP also included a request for delegation of the Federal list of hazardous air pollutants, codified at 40 CFR part 63, subpart C. There are no authorities to delegate in this Subpart, and EPA does not delegate to States the ability to make modifications to the list. As a result, EPA is not taking action to delegate 40 CFR part 63, subpart C or its amendments to NDEP.

II. EPA Action

Today's document serves to notify the public of the delegation of NESHAP to ADEQ on March 16, 2007, and to NDEP on January 12, 2007. Today's action will codify these delegations into the Code of Federal Regulations.

III. 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 updates the list of approved delegations in the Code of Federal Regulations and imposes no additional requirements. 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 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 updates the list of already-ndash;approved delegations, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2007. 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 63

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

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 412.

Date Signed: April 19, 2007.

Deborah Jordan,

Director, Air Division, Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is 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 E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising paragraphs (a)(3) and (a)(28)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(3) The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]
A	General Provisions	X	X	X	X
F	Synthetic Organic Chemical Manufacturing Industry	X	X	X	X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X	X	X	X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X	X	X	X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X	X	X	X
J	Polyvinyl Chloride and Copolymers Production	X	X	.....	.....
L	Coke Oven Batteries	X	X	X	X
M	Perchloroethylene Dry Cleaning	X	X	X	X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	X	X	X	X
O	Ethylene Oxide Sterilization Facilities	X	X	X	X
Q	Industrial Process Cooling Towers	X	X	X	X
R	Gasoline Distribution Facilities	X	X	X	X
S	Pulp and Paper	X	X	X	.....
T	Halogenated Solvent Cleaning	X	X	X	X
U	Group I Polymers and Resins	X	X	X	X
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X	X	X	X
X	Secondary Lead Smelting	X	X	X	X
AA	Phosphoric Acid Manufacturing Plants	X	X	X	.....

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]
BB	Phosphate Fertilizers Production Plants	X	X	X	
CC	Petroleum Refineries	X	X	X	X
DD	Off-Site Waste and Recovery Operations	X	X	X	X
EE	Magnetic Tape Manufacturing Operations	X	X	X	X
GG	Aerospace Manufacturing and Rework Facilities	X	X	X	X
HH	Oil and Natural Gas Production Facilities	X	X	X	
JJ	Wood Furniture Manufacturing Operations	X	X	X	X
KK	Printing and Publishing Industry	X	X	X	X
LL	Primary Aluminum Reduction Plants	X		X	
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	X	X		
OO	Tanks—Level 1	X	X	X	X
PP	Containers	X	X	X	X
QQ	Surface Impoundments	X	X	X	X
RR	Individual Drain Systems	X	X	X	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X	X	X	
TT	Equipment Leaks—Control Level 1	X	X	X	
UU	Equipment Leaks—Control Level 2	X	X	X	
VV	Oil-Water Separators and Organic-Water Separators	X	X	X	X
WW	Storage Vessels (Tanks)—Control Level 2	X	X	X	
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	X	X		
YY	Generic MACT Standards	X	X	X	
CCC	Steel Pickling	X	X	X	
DDD	Mineral Wool Production	X	X	X	
EEE	Hazardous Waste Combustors	X	X	X	
GGG	Pharmaceuticals Production	X	X	X	
HHH	Natural Gas Transmission and Storage Facilities	X	X	X	
III	Flexible Polyurethane Foam Production	X	X	X	
JJJ	Group IV Polymers and Resins	X	X	X	X
LLL	Portland Cement Manufacturing Industry	X	X	X	
MMM	Pesticide Active Ingredient Production	X	X	X	
NNN	Wool Fiberglass Manufacturing	X	X	X	
OOO	Manufacture of Amino/Phenolic Resins	X	X	X	
PPP	Polyether Polyols Production	X	X	X	
QQQ	Primary Copper Smelting	X	X	X	
RRR	Secondary Aluminum Production	X	X	X	
TTT	Primary Lead Smelting	X	X	X	
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units.	X	X	X	
VVV	Publicly Owned Treatment Works	X	X	X	
XXX	Ferroalloys Production	X	X	X	
AAAA	Municipal Solid Waste Landfills	X	X	X	
CCCC	Manufacturing of Nutritional Yeast	X	X	X	
EEEE	Organic Liquids Distribution (non-gasoline)	X	X	X	
FFFF	Miscellaneous Organic Chemical Manufacturing	X	X	X	
GGGG	Solvent Extraction for Vegetable Oil Production	X	X	X	
HHHH	Wet-Formed Fiberglass Mat Production	X	X	X	
IIII	Surface Coating of Automobiles and Light-Duty Trucks	X	X		
JJJJ	Paper and Other Web Coating	X	X	X	
KKKK	Surface Coating of Metal Cans	X	X	X	
MMMM	Miscellaneous Metal Parts and Products	X	X	X	
NNNN	Large Appliances	X	X	X	
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles	X	X	X	
PPPP	Surface Coating of Plastic Parts and Products	X	X		
QQQQ	Wood Building Products	X	X	X	
RRRR	Surface Coating of Metal Furniture	X	X	X	
SSSS	Surface Coating of Metal Coil	X	X	X	
TTTT	Leather Finishing Operations	X	X	X	
UUUU	Cellulose Products Manufacturing	X	X	X	
VVVV	Boat Manufacturing	X	X	X	
WWWW	Reinforced Plastics Composites Production	X	X	X	
XXXX	Tire Manufacturing	X	X	X	
YYYY	Stationary Combustion Turbines	X	X	X	
ZZZZ	Stationary Reciprocating Internal Combustion Engines	X	X		
AAAAA	Lime Manufacturing Plants	X	X	X	
BBBBB	Semiconductor Manufacturing	X	X	X	
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks	X	X	X	
EEEEE	Iron and Steel Foundries	X	X	X	
FFFFF	Integrated Iron and Steel	X	X	X	
GGGGG	Site Remediation	X	X	X	

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]
HHHHH	Miscellaneous Coating Manufacturing	X	X	X	
IIIII	Mercury Emissions from Mercury Cell Chlor-Alkali Plants	X	X	X	
JJJJJ	Brick and Structural Clay Products Manufacturing	X	X	X	
KKKKK	Clay Ceramics Manufacturing	X	X	X	
LLLLL	Asphalt Roofing and Processing	X	X	X	
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X	X	X	
NNNNN	Hydrochloric Acid Production	X	X	X	
PPPPP	Engine Test Cells/Stands	X	X	X	
QQQQQ	Friction Products Manufacturing	X	X	X	
RRRRR	Taconite Iron Ore Processing	X	X	X	
SSSSS	Refractory Products Manufacturing	X	X	X	
TTTTT	Primary Magnesium Refining	X	X	X	

[1] Arizona Department of Environmental Quality.
[2] Maricopa County Air Quality Department.
[3] Pima County Department of Environmental Quality.
[4] Pinal County Air Quality Control District.

* * * * *

(28) * * *

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Nevada. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA

Subpart	Description	NDEP[1]	WCAQMD[2]	CCDAQM[3]
A	General Provisions	X	X	
F	Synthetic Organic Chemical Manufacturing Industry	X		
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		
H	Organic Hazardous Air Pollutants: Equipment Leaks	X		
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X		
J	Polyvinyl Chloride and Copolymers Production	X		
L	Coke Oven Batteries	X		
M	Perchloroethylene Dry Cleaning	X	X	
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	X	X	
O	Ethylene Oxide Sterilization Facilities	X	X	
Q	Industrial Process Cooling Towers	X		
R	Gasoline Distribution Facilities	X	X	
S	Pulp and Paper	X		
T	Halogenated Solvent Cleaning	X	X	
U	Group I Polymers and Resins	X		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X		
X	Secondary Lead Smelting	X		
Y	Marine Tank Vessel Loading Operations	X		
AA	Phosphoric Acid Manufacturing Plants	X		
BB	Phosphate Fertilizers Production Plants	X		
CC	Petroleum Refineries	X		
DD	Off-Site Waste and Recovery Operations	X		
EE	Magnetic Tape Manufacturing Operations	X		
GG	Aerospace Manufacturing and Rework Facilities	X		
HH	Oil and Natural Gas Production Facilities	X		
II	Shipbuilding and Ship Repair (Surface Coating)	X		
JJ	Wood Furniture Manufacturing Operations	X		
KK	Printing and Publishing Industry	X	X	
LL	Primary Aluminum Reduction Plants	X		
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	X		
OO	Tanks—Level 1	X		
PP	Containers	X		
QQ	Surface Impoundments	X		
RR	Individual Drain Systems	X		
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X		
TT	Equipment Leaks—Control Level 1	X		
UU	Equipment Leaks—Control Level 2	X		
VV	Oil-Water Separators and Organic-Water Separators	X		
WW	Storage Vessels (Tanks)—Control Level 2	X		
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations	X		

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP[1]	WCAQMD[2]	CCDAQM[3]
YY	Generic MACT Standards	X		
CCC	Steel Pickling	X		
DDD	Mineral Wool Production	X		
EEE	Hazardous Waste Combustors	X		
GGG	Pharmaceuticals Production	X		
HHH	Natural Gas Transmission and Storage Facilities	X		
III	Flexible Polyurethane Foam Production	X		
JJJ	Group IV Polymers and Resins	X		
LLL	Portland Cement Manufacturing Industry	X		
MMM	Pesticide Active Ingredient Production	X		
NNN	Wool Fiberglass Manufacturing	X		
OOO	Manufacture of Amino/Phenolic Resins	X		
PPP	Polyether Polyols Production	X		
QQQ	Primary Copper Smelting	X		
RRR	Secondary Aluminum Production	X		
TTT	Primary Lead Smelting	X		
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units	X		
VVV	Publicly Owned Treatment Works	X		
XXX	Ferroalloys Production	X		
AAAA	Municipal Solid Waste Landfills	X		
CCCC	Manufacturing of Nutritional Yeast	X		
DDDD	Plywood and Composite Wood Products	X		
EEEE	Organic Liquids Distribution (non-gasoline)	X		
FFFF	Miscellaneous Organic Chemical Manufacturing	X		
GGGG	Solvent Extraction for Vegetable Oil Production	X		
HHHH	Wet-Formed Fiberglass Mat Production	X		
JJJJ	Paper and Other Web Coating	X		
KKKK	Surface Coating of Metal Cans	X		
MMMM	Miscellaneous Metal Parts and Products	X		
NNNN	Large Appliances	X		
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles	X		
QQQQ	Wood Building Products	X		
RRRR	Surface Coating of Metal Furniture	X		
SSSS	Surface Coating of Metal Coil	X		
TTTT	Leather Finishing Operations	X		
UUUU	Cellulose Products Manufacturing	X		
VVVV	Boat Manufacturing	X		
WWWW	Reinforced Plastics Composites Production	X		
XXXX	Tire Manufacturing	X		
YYYY	Stationary Combustion Turbines	X		
ZZZZ	Stationary Reciprocating Internal Combustion Engines	X		
AAAAA	Lime Manufacturing Plants	X		
BBBBB	Semiconductor Manufacturing	X		
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks	X		
DDDDD	Industrial, Commercial, and Institutional Boiler and Process Heaters	X		
EEEEE	Iron and Steel Foundries	X		
FFFFF	Integrated Iron and Steel	X		
JJJJJ	Brick and Structural Clay Products Manufacturing	X		
KKKKK	Clay Ceramics Manufacturing	X		
LLLLL	Asphalt Roofing and Processing	X		
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X		
NNNNN	Hydrochloric Acid Production	X		
PPPPP	Engine Test Cells/Stands	X		
QQQQQ	Friction Products Manufacturing	X		
SSSSS	Refractory Products Manufacturing	X		

[1] Nevada Division of Environmental Protection.
[2] Washoe County Air Quality Management Division.
[3] Clark County Department of Air Quality Management.

* * * * *

[FR Doc. E7–8686 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 72, No. 88
Tuesday, May 8, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131

[Docket Nos. AMS–DA–07–0026; AO–14–A77, et al.; DA–07–02]

Milk in the Northeast and Other Marketing Areas; Reconvening of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of reconvened public hearing on proposed rulemaking.

SUMMARY: This notice announces the reconvening of the hearing which began on February 26, 2007, in Strongsville, Ohio, and initially reconvened on April 9, 2007, in Indianapolis, Indiana, to consider proposals to amend the Class III and Class IV product price formulas applicable to all Federal milk marketing orders.

DATES: The hearing will reconvene at 1 p.m. on Monday, July 9, 2007.

ADDRESSES: The reconvened hearing will be held at the Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, Pennsylvania 15219–1122, *telephone:* (412) 261–2000.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971, 1400 Independence Avenue, Washington, DC 20250–0231, (202) 720–2357, e-mail address *jack.rower@usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225–4758; e-mail *phuber@fmmaclev.com* before the hearing begins.

SUPPLEMENTARY INFORMATION:

Prior Documents in This Proceeding

Notice of Hearing: Issued February 5, 2007; published February 9, 2007 (72 FR 6179).

Supplemental Hearing Notice: Issued February 14, 2007; published February 20, 2007 (72 FR 7753).

Initial Reconvened Hearing Notice: Issued March 15, 2007; published March 21, 2007 (72 FR 13219).

Notice is hereby given that the hearing which was adjourned in Indianapolis, Indiana, April 9, 2007, by the Administrative Law Judge designated to hold said hearing and preside thereof, will reconvene in session at 1 p.m., July 9, 2007, at the Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, Pennsylvania 15219. At the reconvened hearing, additional testimony will be received only on proposed amendments 1 through 20, listed in the hearing notice (72 FR 6179) and the supplemental hearing notice (72 FR 7753) to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131

Milk marketing orders.

Authority: 7 U.S.C. 601–674, and 7253.

Dated: May 2, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–2283 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006 and 1007

[AMS–DA–07–0059; AO–388–A22, AO–356–A43 and AO–366–A51; Docket No. DA–07–03]

Milk in the Appalachian, Florida and Southeast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1005	Appalachian	AO–388–A22
1006	Florida	AO–356–A43
1007	Southeast	AO–366–A51

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals seeking to amend certain pooling and related provisions of the Appalachian, Florida and Southeast orders. Proposals include temporarily adjusting the Class I pricing surface for each county within each of the three milk marketing orders until such time that the Department is able to comprehensively address the Class I pricing surface on a national scale. Proposals also include changing the diversion percentage limits, the producer delivery days and the transportation credit provisions of the Appalachian and Southeast orders. Other proposals would change the maximum rates for each of the three orders the market administrator may charge for the expense of administration of the order from 5 cents per hundredweight (cwt) up to 8 cents per cwt. Testimony will be taken to determine if any of the proposals should be handled on an emergency basis.

DATES: The hearing will convene at 1 p.m. on Monday, May, 21, 2007.

ADDRESSES: The hearing will be held at the Sheraton Suites Tampa Airport, 4400 W. Cypress Street, Tampa, FL 33607, (813) 873–8675.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Associate Deputy Administrator, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971–A, 1400 Independence Avenue, SW., Washington, DC 20250–0231. *Gino.Tosi@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact Sue L. Mosley, Market Administrator, at (770) 682–2501; e-mail *smosley@fmmatlanta.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Sheraton Suites Tampa Airport, 4400 W. Cypress Street, Tampa, FL 33607, (813) 873–8675, beginning at 1 p.m. on Monday, May, 21, 2007, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12 (d)) with respect to any proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15) (A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, has its principle place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This public hearing is being conducted to collect evidence for the record concerning the effect on the orderly marketing of fluid milk by adjusting Class I differentials on a temporary basis for the Appalachian, Florida and Southeast marketing areas. Evidence will be taken to determine whether tighter pooling provisions and changes to the transportation credit provisions in the Appalachian and Southeast orders are warranted. Evidence will also be collected to consider increasing the maximum administrative assessment rates for the Appalachian, Florida and Southeast market administrators to 8 cents per hundredweight.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1005, 1006 and 1007

Milk marketing orders.

The authority citation for 7 CFR parts 1005, 1006 and 1007 read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

The proposed amendments, as set forth below, have not received the approval of the Department.

Proposed by Dairy Cooperative Marketing Association, Inc

Proposal No. 1

This proposal would temporarily adjust the Class I pricing surface in each county within the geographical marketing area of the Appalachian milk marketing order. Specifically, this proposal, on a temporary basis, would modify section 1005.51 of the Appalachian order by including a new provision, a ''Class I price adjustment,'' which would be added to the Class I price ''mover,'' and to the section 1000.52 Class I differential, to obtain the minimum Order Class I price. The proposed changes to the Class I prices for plant locations in the Appalachian milk marketing area would range from an increase of $0.10 per cwt to an increase in $1.00 per cwt.

Proposal 1 would also reduce the volume of milk which may be pooled by diversion on the Appalachian order. Specifically, the proposal would decrease the diversion percentages by 5 percent, from 40% to 35%, for the months of March through June and for the month of December. In addition, this proposal proposes that the producer delivery day requirements be amended in the Appalachian order. The current provisions in the Appalachian order require delivery to a pool plant of not less than 2 days' production in the months of January through June, and not less than 6 days' production in the months of July through December, in order for the producer's milk to be eligible for diversion to a nonpool plant. This proposal would allow a producer's milk to be diverted to a nonpool plant if that dairy farmer's milk is delivered to a pool plant one day per month, year around.

Proposal 1 would also amend the current transportation credit balancing fund provisions in the Appalachian order. Specifically, this proposal would: (1) Add the months of January and February to the months when transportation credits are paid, and retain June as an optional payment month based on industry request and market administrator determination of need, (2) pay transportation credits on the entire load of supplemental milk, rather than the current calculated Class I portion of the load, and (3) simplify the process for determination of which producers' milk is eligible for transportation credits as supplemental milk.

1. Amend § 1005.50 by revising paragraph (b) and (c) to read as follows:

§ 1005.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the adjustment to Class I prices specified in § 1005.51(b) plus the higher of the

advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the adjustment to Class I prices specified in § 1005.51(b) divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

2. Amend § 1005.51 by renaming the section, designating the first subsection as (a), amending the language, and adding a new subsection (b) to read as follows:

§ 1005.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1005.50(a) for Mecklenburg County, North Carolina.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 1005.50(a), (b) and (c) using the following adjustments:

State	County/parish	FIPS	Class I price adjustment
GA	CATOOSA	13047	0.60
GA	CHATTOOGA	13055	0.60
GA	DADE	13083	0.60
GA	FANNIN	13111	0.60
GA	MURRAY	13213	0.60
GA	WALKER	13295	0.60
GA	WHITFIELD	13313	0.60
IN	CLARK	18019	0.10
IN	CRAWFORD	18025	0.10
IN	DAVIESS	18027	0.10
IN	DUBOIS	18037	0.10
IN	FLOYD	18043	0.10
IN	GIBSON	18051	0.10
IN	GREENE	18055	0.10
IN	HARRISON	18061	0.10
IN	KNOX	18083	0.10
IN	MARTIN	18101	0.10
IN	ORANGE	18117	0.10
IN	PERRY	18123	0.10
IN	PIKE	18125	0.10
IN	POSEY	18129	0.10
IN	SCOTT	18143	0.10
IN	SPENCER	18147	0.10
IN	SULLIVAN	18153	0.10
IN	VANDERBURGH	18163	0.10
IN	WARRICK	18173	0.10
IN	WASHINGTON	18175	0.10
KY	ADAIR	21001	0.20
KY	ANDERSON	21005	0.40
KY	BATH	21011	0.40
KY	BELL	21013	0.50
KY	BOURBON	21017	0.40
KY	BOYLE	21021	0.40
KY	BREATHITT	21025	0.70
KY	BRECKINRIDGE	21027	0.10
KY	BULLITT	21029	0.10
KY	BUTLER	21031	0.20
KY	CARROLL	21041	0.10
KY	CARTER	21043	0.40
KY	CASEY	21045	0.20
KY	CLARK	21049	0.40
KY	CLAY	21051	0.50
KY	CLINTON	21053	0.50
KY	CUMBERLAND	21057	0.50
KY	DAVIESS	21059	0.10
KY	EDMONSON	21061	0.20
KY	ELLIOTT	21063	0.40
KY	ESTILL	21065	0.40
KY	FAYETTE	21067	0.40
KY	FLEMING	21069	0.40
KY	FRANKLIN	21073	0.10
KY	GALLATIN	21077	0.10
KY	GARRARD	21079	0.40
KY	GRAYSON	21085	0.20
KY	GREEN	21087	0.20
KY	HANCOCK	21091	0.10
KY	HARDIN	21093	0.10
KY	HARLAN	21095	0.50
KY	HART	21099	0.20
KY	HENDERSON	21101	0.10

State	County/parish	FIPS	Class I price adjustment
KY	HENRY	21103	0.10
KY	HOPKINS	21107	0.20
KY	JACKSON	21109	0.70
KY	JEFFERSON	21111	0.10
KY	JESSAMINE	21113	0.40
KY	KNOTT	21119	0.50
KY	KNOX	21121	0.50
KY	LARUE	21123	0.40
KY	LAUREL	21125	0.50
KY	LEE	21129	0.40
KY	LESLIE	21131	0.50
KY	LETCHER	21133	0.50
KY	LINCOLN	21137	0.40
KY	MCCREARY	21147	0.50
KY	MCLEAN	21149	0.40
KY	MADISON	21151	0.40
KY	MARION	21155	0.40
KY	MEADE	21163	0.10
KY	MENIFEE	21165	0.40
KY	MERCER	21167	0.40
KY	MONTGOMERY	21173	0.40
KY	MORGAN	21175	0.40
KY	MUHLENBURG	21177	0.20
KY	NELSON	21179	0.10
KY	NICHOLAS	21181	0.40
KY	OHIO	21183	0.20
KY	OLDHAM	21185	0.10
KY	OWEN	21187	0.10
KY	OWSLEY	21189	0.70
KY	PERRY	21193	0.50
KY	POWELL	21197	0.40
KY	PULASKI	21199	0.50
KY	ROCKCASTLE	21203	0.70
KY	ROWAN	21205	0.40
KY	RUSSELL	21207	0.50
KY	SCOTT	21209	0.10
KY	SHELBY	21211	0.10
KY	SPENCER	21215	0.10
KY	TAYLOR	21217	0.20
KY	TRIMBLE	21223	0.10
KY	UNION	21225	0.10
KY	WASHINGTON	21229	0.40
KY	WAYNE	21231	0.50
KY	WEBSTER	21233	0.20
KY	WHITLEY	21235	0.50
KY	WOLFE	21237	0.40
KY	WOODFORD	21239	0.40
NC	ALAMANCE	37001	0.30
NC	ALEXANDER	37003	0.45
NC	ALLEGHANY	37005	0.45
NC	ANSON	37007	0.50
NC	ASHE	37009	0.45
NC	AVERY	37011	0.45
NC	BEAUFORT	37013	0.40
NC	BERTIE	37015	0.20
NC	BLADEN	37017	0.70
NC	BRUNSWICK	37019	0.70
NC	BUNCOMBE	37021	0.45
NC	BURKE	37023	0.45
NC	CABARRUS	37025	0.30
NC	CALDWELL	37027	0.45
NC	CAMDEN	37029	0.20
NC	CARTERET	37031	0.40
NC	CASWELL	37033	0.30
NC	CATAWBA	37035	0.30
NC	CHATHAM	37037	0.30
NC	CHEROKEE	37039	0.45
NC	CHOWAN	37041	0.20
NC	CLAY	37043	0.45
NC	CLEVELAND	37045	0.30
NC	COLUMBUS	37047	0.70
NC	CRAVEN	37049	0.40
NC	CUMBERLAND	37051	0.30

State	County/parish	FIPS	Class I price adjustment
NC	CURRITUCK	37053	0.20
NC	DARE	37055	0.40
NC	DAVIDSON	37057	0.30
NC	DAVIE	37059	0.30
NC	DUPLIN	37061	0.30
NC	DURHAM	37063	0.30
NC	EDGECOMBE	37065	0.20
NC	FORSYTH	37067	0.30
NC	FRANKLIN	37069	0.30
NC	GASTON	37071	0.30
NC	GATES	37073	0.20
NC	GRAHAM	37075	0.45
NC	GRANVILLE	37077	0.30
NC	GREENE	37079	0.40
NC	GUILFORD	37081	0.30
NC	HALIFAX	37083	0.30
NC	HARNETT	37085	0.10
NC	HAYWOOD	37087	0.45
NC	HENDERSON	37089	0.45
NC	HERTFORD	37091	0.20
NC	HOKE	37093	0.30
NC	HYDE	37095	0.40
NC	IREDELL	37097	0.30
NC	JACKSON	37099	0.45
NC	JOHNSTON	37101	0.20
NC	JONES	37103	0.40
NC	LEE	37105	0.30
NC	LENOIR	37107	0.40
NC	LINCOLN	37109	0.30
NC	MCDOWELL	37111	0.45
NC	MACON	37113	0.45
NC	MADISON	37115	0.45
NC	MARTIN	37117	0.40
NC	MECKLENBURG	37119	0.30
NC	MITCHELL	37121	0.45
NC	MONTGOMERY	37123	0.30
NC	MOORE	37125	0.30
NC	NASH	37127	0.30
NC	NEW HANOVER	37129	0.70
NC	NORTHAMPTON	37131	0.30
NC	ONSLOW	37133	0.30
NC	ORANGE	37135	0.30
NC	PAMLICO	37137	0.40
NC	PASQUOTANK	37139	0.20
NC	PENDER	37141	0.70
NC	PERQUIMANS	37143	0.20
NC	PERSON	37145	0.30
NC	PITT	37147	0.40
NC	POLK	37149	0.30
NC	RANDOLPH	37151	0.30
NC	RICHMOND	37153	0.50
NC	ROBESON	37155	0.70
NC	ROCKINGHAM	37157	0.45
NC	ROWAN	37159	0.30
NC	RUTHERFORD	37161	0.30
NC	SAMPSON	37163	0.30
NC	SCOTLAND	37165	0.30
NC	STANLY	37167	0.30
NC	STOKES	37169	0.45
NC	SURRY	37171	0.45
NC	SWAIN	37173	0.45
NC	TRANSYLVANIA	37175	0.45
NC	TYRRELL	37177	0.40
NC	UNION	37179	0.50
NC	VANCE	37181	0.30
NC	WAKE	37183	0.30
NC	WARREN	37185	0.30
NC	WASHINGTON	37187	0.40
NC	WATAUGA	37189	0.45
NC	WAYNE	37191	0.40
NC	WILKES	37193	0.45
NC	WILSON	37195	0.20
NC	YADKIN	37197	0.30

State	County/parish	FIPS	Class I price adjustment
NC	YANCEY	37199	0.45
SC	ABBEVILLE	45001	0.50
SC	AIKEN	45003	0.70
SC	ALLENDALE	45005	1.00
SC	ANDERSON	45007	0.50
SC	BAMBERG	45009	0.70
SC	BARNWELL	45011	0.70
SC	BEAUFORT	45013	1.00
SC	BERKELEY	45015	1.00
SC	CALHOUN	45017	0.70
SC	CHARLESTON	45019	1.00
SC	CHEROKEE	45021	0.50
SC	CHESTER	45023	0.50
SC	CHESTERFIELD	45025	0.30
SC	CLARENDON	45027	0.70
SC	COLLETON	45029	1.00
SC	DARLINGTON	45031	0.70
SC	DILLON	45033	0.70
SC	DORCHESTER	45035	1.00
SC	EDGEFIELD	45037	0.30
SC	FAIRFIELD	45039	0.30
SC	FLORENCE	45041	0.70
SC	GEORGETOWN	45043	0.70
SC	GREENVILLE	45045	0.50
SC	GREENWOOD	45047	0.50
SC	HAMPTON	45049	1.00
SC	HORRY	45051	0.70
SC	JASPER	45053	1.00
SC	KERSHAW	45055	0.30
SC	LANCASTER	45057	0.50
SC	LAURENS	45059	0.50
SC	LEE	45061	0.70
SC	LEXINGTON	45063	0.70
SC	MCCORMICK	45065	0.50
SC	MARION	45067	0.70
SC	MARLBORO	45069	0.70
SC	NEWBERRY	45071	0.30
SC	OCONEE	45073	0.50
SC	ORANGEBURG	45075	0.70
SC	PICKENS	45077	0.50
SC	RICHLAND	45079	0.70
SC	SALUDA	45081	0.30
SC	SPARTANBURG	45083	0.50
SC	SUMTER	45085	0.70
SC	UNION	45087	0.50
SC	WILLIAMSBURG	45089	0.70
SC	YORK	45091	0.50
TN	ANDERSON	47001	0.40
TN	BLOUNT	47009	0.40
TN	BRADLEY	47011	0.60
TN	CAMPBELL	47013	0.40
TN	CARTER	47019	0.40
TN	CLAIBORNE	47025	0.40
TN	COCKE	47029	0.40
TN	CUMBERLAND	47035	0.40
TN	GRAINGER	47057	0.40
TN	GREENE	47059	0.40
TN	HAMBLEN	47063	0.40
TN	HAMILTON	47065	0.60
TN	HANCOCK	47067	0.40
TN	HAWKINS	47073	0.40
TN	JEFFERSON	47089	0.40
TN	JOHNSON	47091	0.40
TN	KNOX	47093	0.40
TN	LOUDON	47105	0.40
TN	MCMINN	47107	0.60
TN	MARION	47115	0.60
TN	MEIGS	47121	0.60
TN	MONROE	47123	0.60
TN	MORGAN	47129	0.40
TN	POLK	47139	0.60
TN	RHEA	47143	0.40
TN	ROANE	47145	0.40

State	County/parish	FIPS	Class I price adjustment
TN	SCOTT	47151	0.10
TN	SEQUATCHIE	47153	0.40
TN	SEVIER	47155	0.40
TN	SULLIVAN	47163	0.40
TN	UNICOI	47171	0.40
TN	UNION	47173	0.40
TN	WASHINGTON	47179	0.40
VA	ALLEGHANY	51005	0.10
VA	AMHERST	51009	0.40
VA	AUGUSTA	51015	0.10
VA	BATH	51017	0.10
VA	BEDFORD	51019	0.40
VA	BLAND	51021	0.40
VA	BOTETOURT	51023	0.10
VA	BUCHANAN	51027	0.10
VA	CAMPBELL	51031	0.40
VA	CARROLL	51035	0.40
VA	CRAIG	51045	0.10
VA	DICKENSON	51051	0.40
VA	FLOYD	51063	0.40
VA	FRANKLIN	51067	0.40
VA	GILES	51071	0.10
VA	GRAYSON	51077	0.40
VA	HENRY	51089	0.40
VA	HIGHLAND	51091	0.10
VA	LEE	51105	0.40
VA	MONTGOMERY	51121	0.40
VA	PATRICK	51141	0.40
VA	PITTSYLVANIA	51143	0.40
VA	PULASKI	51155	0.40
VA	ROANOKE	51161	0.40
VA	ROCKBRIDGE	51163	0.10
VA	ROCKINGHAM	51165	0.10
VA	RUSSELL	51167	0.40
VA	SCOTT	51169	0.40
VA	SMYTH	51173	0.40
VA	TAZEWELL	51185	0.40
VA	WASHINGTON	51191	0.40
VA	WISE	51195	0.40
VA	WYTHE	51197	0.40
VA	BEDFORD CITY	51515	0.40
VA	BRISTOL CITY	51520	0.40
VA	BUENA VISTA CITY	51530	0.10
VA	CLIFTON FORGE CITY	51560	0.10
VA	COVINGTON CITY	51580	0.10
VA	DANVILLE CITY	51590	0.40
VA	GALAX CITY	51640	0.40
VA	HARRISONBURG CITY	51660	0.10
VA	LEXINGTON CITY	51678	0.10
VA	LYNCHBURG CITY	51680	0.40
VA	MARTINSVILLE CITY	51690	0.40
VA	NORTON CITY	51720	0.40
VA	RADFORD CITY	51750	0.40
VA	ROANOKE CITY	51770	0.40
VA	SALEM CITY	51775	0.40
VA	STAUNTON CITY	51790	0.10
VA	WAYNESBORO CITY	51820	0.10
WV	MCDOWELL	54047	0.10
WV	MERCER	54055	0.10

3. Amend § 1005.13 by revising paragraph (d)(1) through (4) to read as follows:

§ 1005.13 Producer milk.

* * * * *

(d) * * *

(1) In any month of July through December, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may

divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from handler described in § 1000.9(c);

* * * * *

4. Amend § 1005.81 by revising (a) to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except) as provided in § 1009.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the Market Administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.15 per hundredweight or such lesser amount as the Market Administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-February period. In the event that during any month of the June-February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

* * * * *

5. Amend § 1005.82 by revising paragraphs (a)(1), (b), (c)(1), (d)(2) (iii), (d)(3)(v), and redesignating paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv) to read as (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) to read as follows:

* * * * *

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, February and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the Market Administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

* * * * *

(4) * * *

(b) The Market Administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the month of June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the Market Administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) * * *

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1007; and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The farmer was not a ''producer'' under this order for more than 45 days during the immediately preceding months of March through May, or not more than 50 percent of the production of the dairy farmer during those 3 months, in aggregate, was received as producer milk under this order during those 3 months; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of the order in this part or the marketing area of Federal Order 1007 (7 CFR part 1007).

(iii) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(i) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(d) * * *

(iii) Subtract the applicable Class I price specified in § 1005.51 for the county in which the shipping plant is located from the Class I price applicable for the county in which the receiving plant is located;

(3) * * *

(v) Subtract the Class I price specified in § 1005.51 applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location;

* * * * *

Proposed by Dairy Cooperative Marketing Association, Inc

Proposal No. 2

This proposal would temporarily adjust the Class I pricing surface in each county within the geographical marketing area of the Southeast milk marketing order. Specifically, this proposal would, on a temporary basis, modify section 1007.51 of the Southeast order by including a new provision, a ''Class I price adjustment,'' which would be added to the Class I price ''mover,'' and to the section 1000.52 Class I differential, to obtain the minimum Order Class I price. The proposed changes to the Class I prices for plant locations in the Southeast milk marketing area would range from an increase of $0.10 per cwt to an increase of $1.15 per cwt.

Proposal 2 would also reduce the volume of milk which may be pooled by diversion on the Southeast order. Specifically, the proposal would decrease the current diversion percentages for each month, from 50% for the months of January through June and 33% for the months of July through December, to 25% for the months of January, February, and July through November, and to 35% for the months of March through June and the month of

December. In addition, this proposal proposes that the producer delivery day requirements be amended in the Southeast order. The current provisions in the Southeast order require delivery to a pool plant of not less than 4 days' production in the months of January through June, and not less than 10 days' production in the months of July through December, in order for the producer's milk to be eligible for diversion to a nonpool plant. This proposal would allow a producer's milk to be diverted to a nonpool plant if that dairy farmer's milk is delivered to a pool plant one day per month, year around.

Proposal 2 would also amend the current transportation credit balancing fund provisions in the Southeast order. Specifically, this proposal would: (1) Add the months of January and February to the months when transportation credits are paid, and retain June as an optional payment month based on industry request and market administrator determination of need, (2) pay transportation credits on the entire load of supplemental milk, rather than the current calculated Class I portion of the load, (3) simplify the process for determination of which producers' milk is eligible for transportation credits as supplemental milk, and (4) increase the maximum transportation credit assessment in the Southeast order from the current $0.20 per cwt to $0.30 per cwt of Class I producer milk.

1. Amend § 1007.50 by revising paragraph (b) and (c) to read as follows:

§ 1007.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the adjustment to Class I prices specified in § 1007.51(b) plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the adjustment to Class I prices specified in § 1007.51(b) divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

2. Amend § 1007.51 by renaming the section, designating the first subsection as (a), amending the language, and adding a new subsection (b) to read as follows:

§ 1007.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1007.50(a) for Fulton County, Georgia.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 1007.50(a), (b) and (c) using the following adjustments:

State	County/Parish	FIPS	Class I price adjustment
AL	AUTAUGA	01001	0.50
AL	BALDWIN	01003	0.50
AL	BARBOUR	01005	0.55
AL	BIBB	01007	0.30
AL	BLOUNT	01009	0.20
AL	BULLOCK	01011	0.70
AL	BUTLER	01013	0.55
AL	CALHOUN	01015	0.30
AL	CHAMBERS	01017	0.70
AL	CHEROKEE	01019	0.30
AL	CHILTON	01021	0.70
AL	CHOCTAW	01023	0.50
AL	CLARKE	01025	0.35
AL	CLAY	01027	0.70
AL	CLEBURNE	01029	0.70
AL	COFFEE	01031	0.85
AL	COLBERT	01033	0.30
AL	CONECUH	01035	0.55
AL	COOSA	01037	0.70
AL	COVINGTON	01039	0.55
AL	CRENSHAW	01041	0.55
AL	CULLMAN	01043	0.20
AL	DALE	01045	0.85
AL	DALLAS	01047	0.50
AL	DE KALB	01049	0.40
AL	ELMORE	01051	0.50
AL	ESCAMBIA	01053	0.55
AL	ETOWAH	01055	0.30
AL	FAYETTE	01057	0.20
AL	FRANKLIN	01059	0.30
AL	GENEVA	01061	0.85
AL	GREENE	01063	0.30
AL	HALE	01065	0.30
AL	HENRY	01067	0.85
AL	HOUSTON	01069	0.85
AL	JACKSON	01071	0.40
AL	JEFFERSON	01073	0.30
AL	LAMAR	01075	0.20
AL	LAUDERDALE	01077	0.30
AL	LAWRENCE	01079	0.30
AL	LEE	01081	0.70
AL	LIMESTONE	01083	0.30

State	County/Parish	FIPS	Class I price adjustment
AL	LOWNDES	01085	0.70
AL	MACON	01087	0.70
AL	MADISON	01089	0.30
AL	MARENGO	01091	0.50
AL	MARION	01093	0.20
AL	MARSHALL	01095	0.40
AL	MOBILE	01097	0.50
AL	MONROE	01099	0.35
AL	MONTGOMERY	01101	0.70
AL	MORGAN	01103	0.30
AL	PERRY	01105	0.30
AL	PICKENS	01107	0.30
AL	PIKE	01109	0.55
AL	RANDOLPH	01111	0.70
AL	RUSSELL	01113	0.70
AL	SAINT CLAIR	01115	0.30
AL	SHELBY	01117	0.30
AL	SUMTER	01119	0.30
AL	TALLADEGA	01121	0.30
AL	TALLAPOOSA	01123	0.70
AL	TUSCALOOSA	01125	0.30
AL	WALKER	01127	0.20
AL	WASHINGTON	01129	0.35
AL	WILCOX	01131	0.50
AL	WINSTON	01133	0.20
AR	ARKANSAS	05001	0.00
AR	ASHLEY	05003	0.10
AR	BAXTER	05005	0.10
AR	BENTON	05007	0.10
AR	BOONE	05009	0.10
AR	BRADLEY	05011	0.30
AR	CALHOUN	05013	0.30
AR	CARROLL	05015	0.10
AR	CHICOT	05017	0.10
AR	CLARK	05019	0.00
AR	CLAY	05021	0.10
AR	CLEBURNE	05023	0.10
AR	CLEVELAND	05025	0.30
AR	COLUMBIA	05027	0.10
AR	CONWAY	05029	0.10
AR	CRAIGHEAD	05031	0.10
AR	CRAWFORD	05033	0.10
AR	CRITTENDEN	05035	0.10
AR	CROSS	05037	0.10
AR	DALLAS	05039	0.00
AR	DESHA	05041	0.30
AR	DREW	05043	0.30
AR	FAULKNER	05045	0.10
AR	FRANKLIN	05047	0.10
AR	FULTON	05049	0.10
AR	GARLAND	05051	0.10
AR	GRANT	05053	0.00
AR	GREENE	05055	0.10
AR	HEMPSTEAD	05057	0.30
AR	HOT SPRING	05059	0.00
AR	HOWARD	05061	0.00
AR	INDEPENDENCE	05063	0.10
AR	IZARD	05065	0.10
AR	JACKSON	05067	0.10
AR	JEFFERSON	05069	0.00
AR	JOHNSON	05071	0.10
AR	LAFAYETTE	05073	0.10
AR	LAWRENCE	05075	0.10
AR	LEE	05077	0.10
AR	LINCOLN	05079	0.30
AR	LITTLE RIVER	05081	0.30
AR	LOGAN	05083	0.10
AR	LONOKE	05085	0.10
AR	MADISON	05087	0.10
AR	MARION	05089	0.10
AR	MILLER	05091	0.10
AR	MISSISSIPPI	05093	0.30
AR	MONROE	05095	0.10

State	County/Parish	FIPS	Class I price adjustment
AR	MONTGOMERY	05097	0.10
AR	NEVADA	05099	0.30
AR	NEWTON	05101	0.10
AR	OUACHITA	05103	0.30
AR	PERRY	05105	0.10
AR	PHILLIPS	05107	0.00
AR	PIKE	05109	0.00
AR	POINSETT	05111	0.30
AR	POLK	05113	0.10
AR	POPE	05115	0.10
AR	PRAIRIE	05117	0.10
AR	PULASKI	05119	0.10
AR	RANDOLPH	05121	0.10
AR	SAINT FRANCIS	05123	0.10
AR	SALINE	05125	0.10
AR	SCOTT	05127	0.10
AR	SEARCY	05129	0.10
AR	SEBASTIAN	05131	0.10
AR	SEVIER	05133	0.00
AR	SHARP	05135	0.10
AR	STONE	05137	0.10
AR	UNION	05139	0.10
AR	VAN BUREN	05141	0.10
AR	WASHINGTON	05143	0.10
AR	WHITE	05145	0.10
AR	WOODRUFF	05147	0.10
AR	YELL	05149	0.10
FL	ESCAMBIA	12033	0.55
FL	OKALOOSA	12091	0.55
FL	SANTA ROSA	12113	0.55
FL	WALTON	12131	0.55
GA	APPLING	13001	1.15
GA	ATKINSON	13003	1.15
GA	BACON	13005	1.15
GA	BAKER	13007	0.85
GA	BALDWIN	13009	0.70
GA	BANKS	13011	0.70
GA	BARROW	13013	0.70
GA	BARTOW	13015	0.30
GA	BEN HILL	13017	1.15
GA	BERRIEN	13019	1.15
GA	BIBB	13021	0.70
GA	BLECKLEY	13023	1.00
GA	BRANTLEY	13025	1.15
GA	BROOKS	13027	1.15
GA	BRYAN	13029	1.15
GA	BULLOCH	13031	1.00
GA	BURKE	13033	0.70
GA	BUTTS	13035	0.70
GA	CALHOUN	13037	0.85
GA	CAMDEN	13039	1.15
GA	CANDLER	13043	1.00
GA	CARROLL	13045	0.70
GA	CHARLTON	13049	1.15
GA	CHATHAM	13051	1.15
GA	CHATTAHOOCHEE	13053	0.70
GA	CHEROKEE	13057	0.30
GA	CLARKE	13059	0.70
GA	CLAY	13061	0.85
GA	CLAYTON	13063	0.70
GA	CLINCH	13065	1.15
GA	COBB	13067	0.70
GA	COFFEE	13069	1.15
GA	COLQUITT	13071	1.15
GA	COLUMBIA	13073	0.70
GA	COOK	13075	1.15
GA	COWETA	13077	0.70
GA	CRAWFORD	13079	0.70
GA	CRISP	13081	0.85
GA	DAWSON	13085	0.30
GA	DECATUR	13087	1.15
GA	DE KALB	13089	0.70
GA	DODGE	13091	0.85

State	County/Parish	FIPS	Class I price adjustment
GA	DOOLY	13093	0.85
GA	DOUGHERTY	13095	0.85
GA	DOUGLAS	13097	0.70
GA	EARLY	13099	0.85
GA	ECHOLS	13101	1.15
GA	EFFINGHAM	13103	1.00
GA	ELBERT	13105	0.70
GA	EMANUEL	13107	1.00
GA	EVANS	13109	1.15
GA	FAYETTE	13113	0.70
GA	FLOYD	13115	0.30
GA	FORSYTH	13117	0.70
GA	FRANKLIN	13119	0.70
GA	FULTON	13121	0.70
GA	GILMER	13123	0.30
GA	GLASCOCK	13125	0.90
GA	GLYNN	13127	1.15
GA	GORDON	13129	0.30
GA	GRADY	13131	1.15
GA	GREENE	13133	0.70
GA	GWINNETT	13135	0.70
GA	HABERSHAM	13137	0.30
GA	HALL	13139	0.70
GA	HANCOCK	13141	0.70
GA	HARALSON	13143	0.70
GA	HARRIS	13145	0.70
GA	HART	13147	0.70
GA	HEARD	13149	0.70
GA	HENRY	13151	0.70
GA	HOUSTON	13153	0.70
GA	IRWIN	13155	1.15
GA	JACKSON	13157	0.70
GA	JASPER	13159	0.70
GA	JEFF DAVIS	13161	1.15
GA	JEFFERSON	13163	0.70
GA	JENKINS	13165	1.00
GA	JOHNSON	13167	1.00
GA	JONES	13169	0.70
GA	LAMAR	13171	0.70
GA	LANIER	13173	1.15
GA	LAURENS	13175	1.00
GA	LEE	13177	0.85
GA	LIBERTY	13179	1.15
GA	LINCOLN	13181	0.70
GA	LONG	13183	1.15
GA	LOWNDES	13185	1.15
GA	LUMPKIN	13187	0.30
GA	MCDUFFIE	13189	0.70
GA	MCINTOSH	13191	1.15
GA	MACON	13193	0.70
GA	MADISON	13195	0.70
GA	MARION	13197	0.70
GA	MERIWETHER	13199	0.70
GA	MILLER	13201	0.85
GA	MITCHELL	13205	1.15
GA	MONROE	13207	0.70
GA	MONTGOMERY	13209	1.15
GA	MORGAN	13211	0.70
GA	MUSCOGEE	13215	0.70
GA	NEWTON	13217	0.70
GA	OCONEE	13219	0.70
GA	OGLETHORPE	13221	0.70
GA	PAULDING	13223	0.70
GA	PEACH	13225	0.70
GA	PICKENS	13227	0.30
GA	PIERCE	13229	1.15
GA	PIKE	13231	0.70
GA	POLK	13233	0.70
GA	PULASKI	13235	0.85
GA	PUTNAM	13237	0.70
GA	QUITMAN	13239	0.85
GA	RABUN	13241	0.30
GA	RANDOLPH	13243	0.85

State	County/Parish	FIPS	Class I price adjustment
GA	RICHMOND	13245	0.70
GA	ROCKDALE	13247	0.70
GA	SCHLEY	13249	0.70
GA	SCREVEN	13251	1.00
GA	SEMINOLE	13253	1.15
GA	SPALDING	13255	0.70
GA	STEPHENS	13257	0.30
GA	STEWART	13259	0.55
GA	SUMTER	13261	0.85
GA	TALBOT	13263	0.70
GA	TALIAFERRO	13265	0.70
GA	TATTNALL	13267	1.15
GA	TAYLOR	13269	0.70
GA	TELFAIR	13271	1.15
GA	TERRELL	13273	0.85
GA	THOMAS	13275	1.15
GA	TIFT	13277	1.15
GA	TOOMBS	13279	1.15
GA	TOWNS	13281	0.30
GA	TREUTLEN	13283	1.00
GA	TROUP	13285	0.70
GA	TURNER	13287	0.85
GA	TWIGGS	13289	0.70
GA	UNION	13291	0.30
GA	UPSON	13293	0.70
GA	WALTON	13297	0.70
GA	WARE	13299	1.15
GA	WARREN	13301	0.70
GA	WASHINGTON	13303	0.70
GA	WAYNE	13305	1.15
GA	WEBSTER	13307	0.55
GA	WHEELER	13309	1.15
GA	WHITE	13311	0.30
GA	WILCOX	13315	0.85
GA	WILKES	13317	0.70
GA	WILKINSON	13319	0.70
GA	WORTH	13321	0.85
KY	ALLEN	21003	0.20
KY	BALLARD	21007	0.30
KY	BARREN	21009	0.20
KY	CALDWELL	21033	0.20
KY	CALLOWAY	21035	0.30
KY	CARLISLE	21039	0.30
KY	CHRISTIAN	21047	0.20
KY	CRITTENDEN	21055	0.20
KY	FULTON	21075	0.30
KY	GRAVES	21083	0.30
KY	HICKMAN	21105	0.30
KY	LIVINGSTON	21139	0.30
KY	LOGAN	21141	0.20
KY	LYON	21143	0.20
KY	MCCRACKEN	21145	0.30
KY	MARSHALL	21157	0.30
KY	METCALFE	21169	0.20
KY	MONROE	21171	0.50
KY	SIMPSON	21213	0.20
KY	TODD	21219	0.20
KY	TRIGG	21221	0.20
KY	WARREN	21227	0.20
LA	ACADIA	22001	0.30
LA	ALLEN	22003	0.30
LA	ASCENSION	22005	0.20
LA	ASSUMPTION	22007	0.20
LA	AVOYELLES	22009	0.00
LA	BEAUREGARD	22011	0.30
LA	BIENVILLE	22013	0.00
LA	BOSSIER	22015	0.10
LA	CADDO	22017	0.10
LA	CALCASIEU	22019	0.30
LA	CALDWELL	22021	0.00
LA	CAMERON	22023	0.20
LA	CATAHOULA	22025	0.00
LA	CLAIBORNE	22027	0.10

State	County/Parish	FIPS	Class I price adjustment
LA	CONCORDIA	22029	0.00
LA	DE SOTO	22031	0.00
LA	EAST BATON ROUGE	22033	0.20
LA	EAST CARROLL	22035	0.20
LA	EAST FELICIANA	22037	0.30
LA	EVANGELINE	22039	0.30
LA	FRANKLIN	22041	0.00
LA	GRANT	22043	0.00
LA	IBERIA	22045	0.20
LA	IBERVILLE	22047	0.20
LA	JACKSON	22049	0.00
LA	JEFFERSON	22051	0.20
LA	JEFFERSON DAVIS	22053	0.30
LA	LAFAYETTE	22055	0.20
LA	LAFOURCHE	22057	0.20
LA	LA SALLE	22059	0.00
LA	LINCOLN	22061	0.10
LA	LIVINGSTON	22063	0.20
LA	MADISON	22065	0.00
LA	MOREHOUSE	22067	0.10
LA	NATCHITOCHES	22069	0.00
LA	ORLEANS	22071	0.20
LA	OUACHITA	22073	0.10
LA	PLAQUEMINES	22075	0.20
LA	POINTE COUPEE	22077	0.30
LA	RAPIDES	22079	0.00
LA	RED RIVER	22081	0.00
LA	RICHLAND	22083	0.20
LA	SABINE	22085	0.00
LA	SAINT BERNARD	22087	0.20
LA	SAINT CHARLES	22089	0.20
LA	SAINT HELENA	22091	0.30
LA	SAINT JAMES	22093	0.20
LA	SAINT JOHN THE BAPTIST	22095	0.20
LA	SAINT LANDRY	22097	0.30
LA	SAINT MARTIN	22099	0.20
LA	SAINT MARY	22101	0.20
LA	SAINT TAMMANY	22103	0.30
LA	TANGIPAHOA	22105	0.20
LA	TENSAS	22107	0.00
LA	TERREBONNE	22109	0.20
LA	UNION	22111	0.10
LA	VERMILION	22113	0.20
LA	VERMILION	22113	0.20
LA	VERNON	22115	0.00
LA	WASHINGTON	22117	0.30
LA	WEBSTER	22119	0.10
LA	WEST BATON ROUGE	22121	0.20
LA	WEST CARROLL	22123	0.10
LA	WEST FELICIANA	22125	0.30
LA	WINN	22127	0.00
MS	ADAMS	28001	0.00
MS	ALCORN	28003	0.30
MS	AMITE	28005	0.40
MS	ATTALA	28007	0.20
MS	BENTON	28009	0.30
MS	BOLIVAR	28011	0.10
MS	CALHOUN	28013	0.10
MS	CARROLL	28015	0.20
MS	CHICKASAW	28017	0.10
MS	CHOCTAW	28019	0.20
MS	CLAIBORNE	28021	0.10
MS	CLARKE	28023	0.50
MS	CLAY	28025	0.20
MS	COAHOMA	28027	0.30
MS	COPIAH	28029	0.10
MS	COVINGTON	28031	0.00
MS	DE SOTO	28033	0.00
MS	FORREST	28035	0.40
MS	FRANKLIN	28037	0.00
MS	GEORGE	28039	0.40
MS	GREENE	28041	0.40
MS	GRENADA	28043	0.10

State	County/Parish	FIPS	Class I price adjustment
MS	HANCOCK	28045	0.30
MS	HARRISON	28047	0.30
MS	HINDS	28049	0.00
MS	HOLMES	28051	0.20
MS	HUMPHREYS	28053	0.20
MS	ISSAQUENA	28055	0.20
MS	ITAWAMBA	28057	0.30
MS	JACKSON	28059	0.30
MS	JASPER	28061	0.10
MS	JEFFERSON	28063	0.00
MS	JEFFERSON DAVIS	28065	0.00
MS	JONES	28067	0.40
MS	KEMPER	28069	0.30
MS	LAFAYETTE	28071	0.30
MS	LAMAR	28073	0.40
MS	LAUDERDALE	28075	0.10
MS	LAWRENCE	28077	0.00
MS	LEAKE	28079	0.20
MS	LEE	28081	0.30
MS	LEFLORE	28083	0.10
MS	LINCOLN	28085	0.00
MS	LOWNDES	28087	0.20
MS	MADISON	28089	0.20
MS	MARION	28091	0.40
MS	MARSHALL	28093	0.00
MS	MONROE	28095	0.20
MS	MONTGOMERY	28097	0.20
MS	NESHOBA	28099	0.20
MS	NEWTON	28101	0.10
MS	NOXUBEE	28103	0.30
MS	OKTIBBEHA	28105	0.20
MS	PANOLA	28107	0.30
MS	PEARL RIVER	28109	0.40
MS	PERRY	28111	0.40
MS	PIKE	28113	0.40
MS	PONTOTOC	28115	0.30
MS	PRENTISS	28117	0.30
MS	QUITMAN	28119	0.30
MS	RANKIN	28121	0.10
MS	SCOTT	28123	0.10
MS	SHARKEY	28125	0.20
MS	SIMPSON	28127	0.10
MS	SMITH	28129	0.10
MS	STONE	28131	0.40
MS	SUNFLOWER	28133	0.10
MS	TALLAHATCHIE	28135	0.10
MS	TATE	28137	0.00
MS	TIPPAH	28139	0.30
MS	TISHOMINGO	28141	0.30
MS	TUNICA	28143	0.00
MS	UNION	28145	0.30
MS	WALTHALL	28147	0.40
MS	WARREN	28149	0.00
MS	WASHINGTON	28151	0.10
MS	WAYNE	28153	0.40
MS	WEBSTER	28155	0.20
MS	WILKINSON	28157	0.40
MS	WINSTON	28159	0.20
MS	YALOBUSHA	28161	0.10
MS	YAZOO	28163	0.20
MO	BARRY	29009	0.20
MO	BARTON	29011	0.20
MO	BOLLINGER	29017	0.20
MO	BUTLER	29023	0.20
MO	CAPE GIRARDEAU	29031	0.20
MO	CARTER	29035	0.20
MO	CEDAR	29039	0.20
MO	CHRISTIAN	29043	0.20
MO	CRAWFORD	29055	0.40
MO	DADE	29057	0.20
MO	DALLAS	29059	0.20
MO	DENT	29065	0.40
MO	DOUGLAS	29067	0.20

State	County/Parish	FIPS	Class I price adjustment
MO	DUNKLIN	29069	0.50
MO	GREENE	29077	0.20
MO	HOWELL	29091	0.20
MO	IRON	29093	0.40
MO	JASPER	29097	0.20
MO	LACLEDE	29105	0.20
MO	LAWRENCE	29109	0.20
MO	MCDONALD	29119	0.20
MO	MADISON	29123	0.20
MO	MISSISSIPPI	29133	0.50
MO	NEW MADRID	29143	0.50
MO	NEWTON	29145	0.20
MO	OREGON	29149	0.20
MO	OZARK	29153	0.20
MO	PEMISCOT	29155	0.50
MO	PERRY	29157	0.20
MO	POLK	29167	0.20
MO	REYNOLDS	29179	0.20
MO	RIPLEY	29181	0.20
MO	SAINT FRANCOIS	29187	0.40
MO	SCOTT	29201	0.20
MO	SHANNON	29203	0.20
MO	STODDARD	29207	0.20
MO	STONE	29209	0.20
MO	TANEY	29213	0.20
MO	TEXAS	29215	0.20
MO	VERNON	29217	0.20
MO	WASHINGTON	29221	0.40
MO	WAYNE	29223	0.20
MO	WEBSTER	29225	0.20
MO	WRIGHT	29229	0.20
TN	BEDFORD	47003	0.30
TN	BENTON	47005	0.30
TN	BLEDSOE	47007	0.60
TN	CANNON	47015	0.30
TN	CARROLL	47017	0.10
TN	CHEATHAM	47021	0.30
TN	CHESTER	47023	0.10
TN	CLAY	47027	0.30
TN	COFFEE	47031	0.60
TN	CROCKETT	47033	0.30
TN	DAVIDSON	47037	0.30
TN	DECATUR	47039	0.30
TN	DE KALB	47041	0.30
TN	DICKSON	47043	0.30
TN	DYER	47045	0.10
TN	FAYETTE	47047	0.10
TN	FENTRESS	47049	0.30
TN	FRANKLIN	47051	0.40
TN	GIBSON	47053	0.10
TN	GILES	47055	0.40
TN	GRUNDY	47061	0.60
TN	HARDEMAN	47069	0.10
TN	HARDIN	47071	0.10
TN	HAYWOOD	47075	0.30
TN	HENDERSON	47077	0.30
TN	HENRY	47079	0.10
TN	HICKMAN	47081	0.30
TN	HOUSTON	47083	0.30
TN	HUMPHREYS	47085	0.30
TN	JACKSON	47087	0.30
TN	LAKE	47095	0.10
TN	LAUDERDALE	47097	0.30
TN	LAWRENCE	47099	0.40
TN	LEWIS	47101	0.30
TN	LINCOLN	47103	0.40
TN	MCNAIRY	47109	0.10
TN	MACON	47111	0.30
TN	MADISON	47113	0.30
TN	MARSHALL	47117	0.30
TN	MAURY	47119	0.30
TN	MONTGOMERY	47125	0.30
TN	MOORE	47127	0.40

State	County/Parish	FIPS	Class I price adjustment
TN	OBION	47131	0.10
TN	OVERTON	47133	0.30
TN	PERRY	47135	0.30
TN	PICKETT	47137	0.30
TN	PUTNAM	47141	0.30
TN	ROBERTSON	47147	0.30
TN	RUTHERFORD	47149	0.30
TN	SHELBY	47157	0.10
TN	SMITH	47159	0.30
TN	STEWART	47161	0.30
TN	SUMNER	47165	0.30
TN	TIPTON	47167	0.10
TN	TROUSDALE	47169	0.30
TN	VAN BUREN	47175	0.60
TN	WARREN	47177	0.60
TN	WAYNE	47181	0.40
TN	WEAKLEY	47183	0.10
TN	WHITE	47185	0.30
TN	WILLIAMSON	47187	0.30
TN	WILSON	47189	0.30

3. Amend § 1007.13 by revising paragraph (d) (1) through (4) to read as follows:

§ 1007.13 Producer milk.

* * * * *

(d) * * *

(1) In any month of January through June, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 1 days' production of the producer whose milk diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7 (e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9 (c);

* * * * *

4. Amend § 1007.81 by revising (a) to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9 (c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.30 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June-February period. In the event that during any month of the June-February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

* * * * *

5. Amend § 1007.82 by revising paragraphs (a)(1), (b), (c)(1), (d)(2) (iii), (d)(3)(v), and redesignating paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv) to read as (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) to read as follows:

§ 1007.82 [Amended]

* * * * *

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, February and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

* * * * *

(4) * * *

(b) The Market Administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the month of June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that

such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the Market Administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) * * *

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1005; and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The farmer was not a ''producer'' under this order for more than 45 days during the immediately preceding months of March through May, or not more than 50 percent of the production of the dairy farmer during those 3 months, in aggregate, was received as producer milk under this order during those 3 months; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of the order in this part or the marketing area of Federal Order 1005 (7 CFR part 1005).

(iii) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(i) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(d) * * *

(iii) Subtract the applicable Class I price specified in § 1007.51 for the county in which the shipping plant is located from the Class I price applicable for the county in which the receiving plant is located;

(3) * * *

(v) Subtract the Class I price specified in § 1007.51 applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location;

* * * * *

Proposed by Dairy Cooperative Marketing Association, Inc.

Proposal No. 3

This proposal would temporarily adjust the Class I pricing surface in each county within the geographical marketing area of the Florida milk marketing order. Specifically, this proposal would, on a temporary basis, modify section 1006.51 of the Florida order by including a new provision, a ''Class I price adjustment,'' which would be added to the Class I price ''mover,'' and to the section 1000.52 Class I differential, to obtain the minimum Order Class I price. Proposed changes to the Class I prices for plant locations in the Florida order would range from an increase of $1.30 per cwt to an increase of $1.70 per cwt.

1. Amend § 1006.50 by revising paragraph (b) and (c) to read as follows:

§ 1006.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the adjustment to Class I prices specified in § 1006.51 (b) plus the higher of the advanced pricing factors computed in paragraph (q) (1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the adjustment to Class I prices specified in § 1006.51(b) divided by 100, plus the advanced butterfat price computed in paragraph (q) (3) of this section.

* * * * *

2. Amend § 1006.51 by renaming the section, designating the first subsection as (a), amending the language, and adding a new subsection (b) to read as follows:

§ 1006.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1006.50 (a) for Hillsborough County, Florida.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 1006.50 (a), (b) and (c) using the following adjustments:

State	County/parish	FIPS	Class I price adjustment
FL	ALACHUA	12001	1.30
FL	BAKER	12003	1.30
FL	BAY	12005	0.60
FL	BRADFORD	12007	1.30
FL	BREVARD	12009	1.40
FL	BROWARD	12011	1.70
FL	CALHOUN	12013	0.60
FL	CHARLOTTE	12015	1.50
FL	CITRUS	12017	1.40
FL	CLAY	12019	1.30
FL	COLLIER	12021	1.70
FL	COLUMBIA	12023	1.30
FL	DADE	12025	1.70
FL	DE SOTO	12027	1.80
FL	DIXIE	12029	1.30
FL	DUVAL	12031	1.30
FL	FLAGLER	12035	1.00
FL	FRANKLIN	12037	0.90
FL	GADSDEN	12039	0.90
FL	GILCHRIST	12041	1.30
FL	GLADES	12043	1.50
FL	GULF	12045	0.90

State	County/parish	FIPS	Class I price adjustment
FL	HAMILTON	12047	1.30
FL	HARDEE	12049	1.80
FL	HENDRY	12051	1.70
FL	HERNANDO	12053	1.40
FL	HIGHLANDS	12055	1.80
FL	HILLSBOROUGH	12057	1.40
FL	HOLMES	12059	0.60
FL	INDIAN RIVER	12061	1.80
FL	JACKSON	12063	0.60
FL	JEFFERSON	12065	0.90
FL	LAFAYETTE	12067	1.30
FL	LAKE	12069	1.40
FL	LEE	12071	1.70
FL	LEON	12073	0.90
FL	LEVY	12075	1.00
FL	LIBERTY	12077	0.90
FL	MADISON	12079	1.30
FL	MANATEE	12081	1.80
FL	MARION	12083	1.00
FL	MARTIN	12085	1.50
FL	MONROE	12087	1.70
FL	NASSAU	12089	1.30
FL	OKEECHOBEE	12093	1.80
FL	ORANGE	12095	1.40
FL	OSCEOLA	12097	1.40
FL	PALM BEACH	12099	1.70
FL	PASCO	12101	1.40
FL	PINELLAS	12103	1.40
FL	POLK	12105	1.40
FL	PUTNAM	12107	1.30
FL	SAINT JOHNS	12109	1.30
FL	SAINT LUCIE	12111	1.80
FL	SARASOTA	12115	1.80
FL	SEMINOLE	12117	1.40
FL	SUMTER	12119	1.40
FL	SUWANNEE	12121	1.30
FL	TAYLOR	12123	1.30
FL	UNION	12125	1.30
FL	VOLUSIA	12127	1.40
FL	WAKULLA	12129	0.90
FL	WASHINGTON	12133	0.60

Proposed by the Appalachian Market Administrator

Proposal No. 4

This proposal seeks to increase the maximum administrative assessment from the current 5 cents per cwt to a maximum of 8 cents per cwt for the Appalachian milk marketing order.

Revise § 1005.85 to read as follows:

§ 1005.85 Assessment for order administration.

On or before the payment receipt date specified under § 1005.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9 (c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9 (c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43 (d) and other source milk allocated to Class I pursuant to § 1000.44 (a) (3) and (8) and the corresponding steps of § 1000.44 (b), except other source milk that is excluded from the computations pursuant to § 1005.60 (h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to 1000.76 (a) (1) (i) and (ii)

Proposed by the Southeast Market Administrator

Proposal No. 5

This proposal seeks to increase the maximum administrative assessment from the current 5 cents per cwt to a maximum of 8 cents per cwt for the Southeast milk marketing order.

Revise § 1007.85 to read as follows:

§ 1007.85 Assessment for order administration.

On or before the payment receipt date specified under § 1007.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9 (c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9 (c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other

source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1007.60 (h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to 1000.76 (a) (1) (i) and (ii)

Proposed by the Florida Market Administrator

Proposal No. 6

This proposal seeks to increase the maximum administrative assessment from the current 5 cents per cwt to a maximum of 8 cents per cwt for the Florida milk marketing order.

Revise § 1006.85 to read as follows:

§ 1006.85 Assessment for order administration.

On or before the payment receipt date specified under § 1006.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9 (c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9 (c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43 (d) and other source milk allocated to Class I pursuant to § 1000.44 (a) (3) and (8) and the corresponding steps of § 1000.44 (b), except other source milk that is excluded from the computations pursuant to § 1006.60 (h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to 1000.76 (a) (1) (i) and (ii)

Proposal by Dairy Programs, Agricultural Marketing Service

Proposal No. 7

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of the aforesaid marketing areas, or from the Hearing Clerk, United States Department of Agriculture, Room 1083—STOP 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: May 3, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–8802 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[Doc. No. AMS–FV–07–0038; FV–07–701]

Watermelon Research and Promotion Plan; Assessment Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Watermelon Research and Promotion Plan (Plan) to increase the assessment rate on producers, handlers, and importers of watermelons from four cents to six cents per hundredweight. Domestic producers and handlers would pay three cents per hundredweight each and importers would pay six cents per hundredweight. The increase is provided for under the Plan which is authorized by the Watermelon Research and Promotion Act (Act). The National Watermelon Promotion Board (Board), which administers the Plan, recommended this action to sustain and expand their promotional, research, and communications programs.

DATES: Comments must be received by July 9, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the internet at: *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 0634–S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250–0244; fax: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0634, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915; or fax: (202) 205–2800; or e-mail: *Jeanette.Palmer@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under the Watermelon Research and Promotion Plan [7 CFR part 1210]. The Plan is authorized under the Watermelon Research and Promotion Act [7 U.S.C. 4901–4916].

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows producers, handlers, and importers subject to the Plan to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with the law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an

Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Initial Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has considered the economic impact of this action on the small producers, handlers, and importers that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $6.5 million. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this rule would be considered small entities. Producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt.

According to the National Watermelon Promotion Board (Board), there are approximately 1,301 producers, 442 first handlers, and 346 importers who are subject to the provisions of the Plan.

Under the current Plan, domestic producers of 10 acres or more and handlers of watermelon each pay a mandatory assessment rate of two cents per hundredweight, and importers of more than 150,000 pounds of watermelon per year pay an assessment of four cents per hundredweight. Assessments under the program are used by the Board to finance promotion, research, and educational programs designed to increase consumer demand for watermelons in the United States and international markets. The assessments at the current four cents per hundredweight generate about $1.5 million in annual revenues. The two cents per hundredweight assessment rate each for domestic watermelon producer and handler was established in April 1990. The four cents per hundredweight assessment rate on imported watermelons became effective when the Plan was amended in February 1995 to authorize the collection of assessments on importers. The Plan is administered by the Board under U.S. Department of Agriculture supervision.

According to the Board, additional revenue is required in order to sustain and expand the promotional, research, and communications programs. The Board approved the proposed assessment rate increase at its February 24, 2007, meeting. This proposed increase is consistent with section 1647(f) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1210.341(b) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. Section 1210.515(a) of the Plan states that an assessment of two cents per hundredweight shall be levied on all watermelons produced and on all watermelons first handled for consumption as human food. It also states that an assessment of four cents per hundredweight shall be levied on watermelons imported into the U.S. for consumption as human food. Further, not more than one assessment on a producer, handler, or importer may be collected on any lot of watermelons.

The Board conducted an inflation analysis based on the current assessment rate of four cents per hundredweight starting from 1995. The analysis results show that, adjusted for inflation, the 1995 four cents per hundredweight total assessment is equivalent to three cents per hundredweight for the current program year. On an inflation adjusted basis, using 1995 as the base year, the watermelon industry's program to support research and promotion activities has lost 25 percent of its effective buying power. This erosion in buying power has had a significant impact on the industry's ability to compete for market share. The cost of media services, research programs, promotional opportunities, as well as general administrative costs and fees paid to USDA have continually risen. Assessments collected have not kept pace with these increasing costs. Movement and sales of watermelon continue to grow, however, that growth has not outpaced the negative effects of inflation.

With the proposed increased assessment, the financial commitment of the U.S. watermelon industry for generic research and promotion activity would increase 50 percent in current dollars. For example, if we apply the proposed assessment increase to the 2005–2006 crop year, in which collections totaled $1,583,983 on 3,959,957,500 pounds of watermelons, the increase in assessments collected would have been approximately $791,991. The Board plans to use the additional funds to expand promotional activities, and to increase the Board's reserve fund over a two-year period to provide for adequate cash flow. By changing the assessment rate to six cents per hundredweight, the Board stated that it would maintain its research and promotional activities, expand its programs, and sustain marketing activities in the future with rising cost expenditures.

The Board estimates the two cents per hundredweight increase in assessments would increase the cost to watermelon producers from $16.00 per truckload of watermelons to $24.00 per truckload of watermelons. At Freight on Board (FOB) prices of about $0.14 per pound of watermelons, this amounts to a total assessment of 0.00429 percent of the value of a truck load of watermelons. This is based on a 40,000 pound net weight of watermelons per truck load.

The Board considered three alternatives prior to the recommendation to increase the assessment rate. First, the Board performed several cost saving measures as an alternative to increasing the assessment rate which included moving to less expensive offices, changes in the staff health insurance program, change in independent auditors, and the elimination of one professional staff position. The results of the savings were over $120,000 which equals approximately 10 percent of the Board's domestic revenue for the 2005–2006 crop year.

The second alternative considered by the Board was a prior attempt to increase additional revenue by expanding the handler base for watermelons. A referendum was conducted by AMS between December 2001 and January 2002. The proposed amendment to the Plan requested the watermelon industry to expand the program to cover all handlers of watermelons which would have included wholesalers, persons who arrange the sale or transfer of watermelon (such as brokers) and fresh cut processors. The amendment was not approved in referendum. Therefore, the Plan continues to cover domestic producers of 10 acres or more, first handlers, and importers of 150,000 pounds of watermelon annually.

The final alternative considered by the Board was the current assessment rate proposal. The Board discussed increasing the assessment rate by one

cent per hundredweight for each producer of 10 acres or more, handler, and importer of 150,000 pounds of watermelon annually. The one cent proposed increase was rejected by the Board on the basis that an increase of this size would only return the program to the 1995 adjusted funding level. In order to sustain and expand the promotional, research, and communication programs, the Board decided to propose an increase assessment rate of two cents per hundredweight for a total assessment rate of six cents per hundredweight (three cents per hundredweight paid by producers, three cents per hundredweight paid by handlers, and six cents per hundredweight paid by importers of watermelons).

This rule does not impose additional recordkeeping requirements on first handlers, producers, or importers of watermelons. Producers of fewer than 10 acres of watermelon and importers of less than 150,000 pounds of watermelon annually are exempt.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation 5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Plan have been approved previously under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Plan on small entities, and we invite comments concerning potential effects of this amendment on small businesses.

Background

Under the Plan, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the position of watermelons in the marketplace, and to establish, maintain, and expand markets for watermelons. This program is financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 or more pounds of watermelons per year. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Board on watermelons imported into the United States through the U.S. Customs Service and Border Protection.

This rule proposes to increase the assessment rate by one cent per hundredweight for producers and handlers each, and by two cents per hundredweight for importers. Currently, the assessment rate is two cents per hundredweight levied on watermelons produced and two cents per hundredweight on watermelons handled within the 50 States of the United States and four cents per hundredweight on imports of watermelon. In order to sustain and expand the promotion, research, and communications programs at present levels, the Board contends that additional revenue is required. The proposed two cents per hundredweight assessment rate increase is estimated to generate $750,000–$800,000 in new revenue, depending upon production levels. For the 2005–2006 crop year, total production was 3,959,957,500 pounds of watermelons resulting in $1,583,983 in assessment collections. Based on assessments collected for that crop year, about 75 percent of this production total was from domestic assessments, with the remainder from imports. The Board states that the proposed assessment rate increase, would enable it to expand media services, educational programs, research programs, and establish, maintain, and expand domestic and foreign markets for watermelons. Some of the additional revenue, the Board states, would be used to increase the reserve fund over a two-year period to provide for adequate cash flow. Also, it is estimated that the Board will receive $2.3 million in total assessments with a six cents per hundredweight assessment rate on watermelons.

In addition, the Board, whose members represent all watermelon producing states as well as importers, voted to propose the assessment rate increase at its February 24, 2007, meeting which was open to the public like all other meetings. The vote to recommend the assessment increase was 22 in favor and 1 against of the Board members present at the meeting. In the case of the one dissenting vote, the producer member stated that he opposed the two cents per hundredweight increase; however, he would support an increase of one cent per hundredweight. The proposed assessment rate of one cent per hundredweight was rejected by the Board on the basis that such an increase would only return the program to its 1995 inflation adjusted funding level. According to the Board, the one cent per hundredweight would not allow the program to expand its activities.

This rule would amend the rules and regulations issued under the Plan. This rule would increase the assessment rate by two cents per hundredweight. The rate would increase from four cents to six cents per hundredweight. Producers of 10 acres or more and handlers of watermelons will each pay three cents per hundredweight and importers of 150,000 pounds or more of watermelons annually will pay six cents per hundredweight. This proposed increase is consistent with section 1647(f) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1210.341(b) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. Further, not more than one assessment on a producer, handler, or importer may be collected on any lot of watermelons. The Board is recommending the proposed assessment rate increase based on continued inflation and rising cost expenditures since the current assessment rate places budget constraints on promotional, research, and communications programs and would result in reducing the programs in the future. Accordingly, section 1210.515(a) of the Plan would be revised.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, Part 1210, Chapter XI of Title 7 is proposed to be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. Section 1210.515 (a) is revised to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of three cents per hundredweight shall be levied on all watermelons produced for ultimate

consumption as human food, and an assessment of three cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of six cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

* * * * *

Dated: May 2, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–8726 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28094; Directorate Identifier 2006–NM–258–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes and Model ERJ 190 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes. The existing AD currently requires repetitively replacing the low-stage check valve and associated seals of the right-hand engine bleed system. This proposed AD adds new airplanes to that existing requirement. For all airplanes, this proposed AD would also require repetitively replacing the low-stage check valve and associated seals of the left-hand engine bleed system with a new check valve and new seals. This proposed AD results from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We are proposing this AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

DATES: We must receive comments on this proposed AD by June 7, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–28094; Directorate Identifier 2006–NM–258–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On November 2, 2005, we issued AD 2005–23–14, amendment 39–14372 (70 FR 69075, November 14, 2005), for all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes. That AD requires repetitive replacement of the low-stage check valve and associated seals of the right-hand (RH) engine bleed system. That AD resulted from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We issued that AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

Actions Since Existing AD Was Issued

When we issued AD 2005–23–14, we stated that the unsafe condition could occur on both the left-hand (LH) and RH engines and that we had determined that requiring repetitive replacement on only the RH engine was sufficient, at that time, for reducing the risk of a dual-engine failure to an acceptable level. Also, when we issued AD 2005–23–14, there were insufficient low-stage check valves available to replace the valves of both the LH and RH engine bleed systems. We have now determined that there are sufficient low-stage check valves to support replacing the valves of both the LH and RH engine bleed systems. We have further determined that it is necessary to require repetitive replacement of the LH low-stage check valve to further reduce the possibility for the failure of the low-stage check valve of both engine bleed systems at the same time.

For Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes, the requirement to repetitively replace the RH low-stage check valve is contained in the airworthiness limitations for these airplanes. Therefore, for Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes, this proposed AD would only require repetitive replacement of the low-stage check valves of the LH engine bleed system.

Since we issued AD 2005–23–14, the Agência Nacional de Avição Civil (ANAC), which is the airworthiness authority for Brazil, has notified us that the unsafe condition addressed by AD 2005–23–14 also exists on all EMBRAER Model ERJ 190 airplanes.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–36–0004, dated November 18, 2005, for Model ERJ 170 airplanes; and Service Bulletin 190–36–0004, dated October 18, 2006, for Model ERJ 190 airplanes. The service bulletins describe procedures for repetitively replacing the low-stage check valve and associated seals of the engine bleed system of the LH and RH engines with a new check valve and new seals. The service bulletins also specify sending the removed check valve to the manufacturer. The ANAC mandated the service information and issued Brazilian airworthiness directive 2005–09–03R1, effective May 23, 2006, for all Model ERJ 170 airplanes; and Brazilian airworthiness directive 2006–11–01R1, effective March 21, 2007, for all Model ERJ 190 airplanes; to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined the ANAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2005–23–14 and would retain the requirements of the existing AD. For Model ERJ 170 airplanes, this proposed AD would also require repetitive replacement of the low-stage check valve and associated seals of the engine bleed system of the LH engine with a new check valve and new seals. For Model ERJ 190 airplanes, this proposed AD would require repetitive replacement of the low-stage check valve and associated seals of the engine bleed system of the LH and RH engines with new check valves and new seals.

Difference Between the Proposed AD and Service Bulletin

Although EMBRAER Service Bulletins 170–36–0004 and 190–36–0004 describe procedures for sending removed check valves to the manufacturer, this proposed AD does not require that action.

Interim Action

This proposed AD is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this proposed AD. Once this modification is approved we may consider additional rulemaking.

Costs of Compliance

The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this proposed AD. The parts manufacturer states that it will supply required parts to operators at no cost.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement of RH check valves on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes (required by AD 2005–23–14).	3	$240, per replacement cycle.	55	$13,200, per replacement cycle.
Replacement of LH check valves on Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes (new proposed action).	3	$240, per replacement cycle.	75	$18,000, per replacement cycle.
Replacement of RH check valves on Model ERJ 190 airplanes (new proposed action).	3	$240, per replacement cycle.	23	$5,520, per replacement cycle.
Replacement of LH check valves on Model ERJ 190 airplanes (new proposed action).	3	$240, per replacement cycle.	23	$5,520, per replacement cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14372 (70 FR 69075, November 14, 2005) and adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2007–28094; Directorate Identifier 2006–NM–258–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 7, 2007.

Affected ADs

(b) This AD supersedes AD 2005–23–14.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We are issuing this AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

Compliance

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

Restatement of Requirements of AD 2005–23–14

Replacement for Right-Hand (RH) Engine on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU Airplanes With New Service Bulletin

(f) For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes: Within 100 flight hours after November 29, 2005 (the effective date of AD 2005–23–14), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005; or paragraph 3.C. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

Parts Installation for RH Engine on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU Airplanes

(g) For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes: As of November 29, 2005, no engine may be installed in the RH position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (f) of this AD.

Removed Check Valves

(h) Although EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

New Requirements of This AD

Replacement for Left-Hand (LH) Engine on All Model ERJ 170 Airplanes

(i) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes: Within 300 flight hours after the effective date of this AD or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the LH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.B. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

Replacement for RH Engine on Model ERJ 190 Airplanes

(j) For Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Within 100 flight hours after the effective date of this AD or prior to the accumulation of 1,500 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.C. of the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0004, dated October 18, 2006. Repeat the replacement thereafter at intervals not to exceed 1,500 flight hours.

Replacement for LH Engine on Model ERJ 190 Airplanes

(k) For Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Within 600 flight hours after the effective date of this AD or prior to the accumulation of 1,500 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the LH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.B. of the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0004, dated October 18, 2006. Repeat the replacement thereafter at intervals not to exceed 1,500 flight hours.

Parts Installation for LH Engine on Model ERJ 170 Airplanes

(l) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes: As of the effective date of this AD, no engine may be installed in the LH position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (i) of this AD.

Parts Installation for RH and LH Engine on Model ERJ 190 Airplanes

(m) For Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: As of the effective date of this AD; no engine may be installed in the RH position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (j) of this AD; and no engine may be installed in the LH position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (k) of this AD.

Removed Check Valves in Accordance With New Service Bulletins

(n) Although EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005; and EMBRAER Service Bulletin 190–36–0004, dated October 18, 2006; specify to send removed check valves to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(p) Brazilian airworthiness directive 2005–09–03R1, effective May 23, 2006; and Brazilian airworthiness directive 2006–11–01R1, effective March 21, 2007; also address the subject of this AD.

Issued in Renton, Washington, on April 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8761 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 2006N–0362]

General and Plastic Surgery Devices; Reclassification of the Absorbable Hemostatic Device; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 7, 2007, the comment period for the proposed rule, published in the **Federal Register** of October 31, 2006 (71 FR 63278). The proposed rule would reclassify the absorbable hemostatic device intended to produce hemostasis from class III (premarket approval) into class II (special controls). FDA is taking this action in response to two requests for an extension of the comment period for this rulemaking. Elsewhere in this issue of the **Federal Register**, FDA is also reopening the comment period on a notice of availability of a draft guidance document that would serve as the special control if FDA reclassifies this device.

DATES: Submit written or electronic comments on the proposed rule by June 7, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2006N–0362, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 31, 2006 (71 FR 63728), FDA published a proposed rule to reclassify the absorbable hemostatic device intended to produce hemostasis from class III (premarket approval) into class II (special controls). FDA invited interested persons to comment on the proposed rule by January 29, 2007. Two companies requested FDA to extend the comment period by 90 days because the proposal presented complex medical and scientific issues that required the company to assemble a team of many different specialties in order to prepare their comments.

FDA was unable to respond to the request to extend the comment period before the comment period ended. Therefore, FDA is reopening the comment period for 30 days in order to allow the requestors and other interested persons to complete and prepare their comments. FDA believes that these 30 days in addition to the time that has already passed since the proposal was published allows for sufficient time for preparation of comments.

Elsewhere in this issue of the **Federal Register**, FDA is also reopening the comment period on a notice of availability of a draft guidance document that would serve as the special control if FDA reclassifies this device.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–8784 Filed 5–7–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–144859–04]

RIN 1545–BD72

Section 1367 Regarding Open Account Debt; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–144859–04) that was published in the **Federal Register** on Thursday, April 12, 2007 (72 FR 18417) relating to the treatment of open account debt between S corporations and their shareholders.

FOR FURTHER INFORMATION CONTACT: Stacy L. Short or Deanne M. Burke, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 1367 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–144859–04) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (REG–144859–04), which was the subject of FR Doc. E7–6764, is corrected as follows:

1. On page 18417, column 3, in the preamble, under the caption **DATES:**, first sentence of the paragraph, the language ''Written or electronic comments and requests for a public hearing must be received by July 11, 2007.'' is corrected to read ''Written or electronic comments must be received by July 10, 2007.''.

2. On page 18418, column 1, in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT:**, lines six through eleven, the language ''attend the hearing, Richard Hurst at (202) 622–2949 (TDD Telephone) (not toll free numbers) and his e-mail address is *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622–7180 (not toll-free numbers).'' is corrected to read ''attend the hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622–7180 (not toll-free numbers).

3. On page 18420, column 2, in the preamble, under the paragraph heading ''Comments and Public Hearing'', the second paragraph of the column, first line, the language ''The rules of 26 CFR 606.601(a)(3)'' is corrected to read ''The rules of 26 CFR 601.601(a)(3)''.

§ 1.1367–2 [Corrected]

4. On page 18422, column 1, § 1.1367–2, first paragraph of the column, third line of the paragraph, the language ''1. The section heading is revised.'' is corrected to read ''1. The section heading and paragraph are revised.''.

5. On page 18422, column 1, § 1.1367–2, first paragraph of the column, lines four through seven are removed.

§ 1.1367–3 [Corrected]

6. On page 18422, column 1, § 1.1367–3, second paragraph of the column, the language of the paragraph heading ''§ 1.1367–3 Effective dates and transitional rules.'' is corrected to read ''§ 1.1367–3 Effective date.''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–8705 Filed 5–7–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123365–03]

RIN 1545–BC94

Guidance Regarding the Active Trade or Business Requirement Under Section 355(b)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding the active trade or business requirement under section 355(b) of the Internal Revenue Code. These proposed regulations provide guidance on issues involving the active trade or business requirement under section 355(b), including guidance resulting from the enactment of section 355(b)(3). These proposed regulations will affect corporations and their shareholders.

DATES: Written or electronic comments and requests for a public hearing must be received by August 6, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–123365–03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–123365–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–123365–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Russell P. Subin, (202) 622–7790; concerning submissions and the hearing, Kelly Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

A. Background and Overview of the Key Aspects of the Proposed Regulations

1. Background

Section 355(a) of the Internal Revenue Code (Code) provides that, under certain circumstances, a corporation may distribute stock and securities of a corporation it controls to its shareholders and security holders without causing either the corporation or its shareholders and security holders to recognize income, gain or loss. Sections 355(a)(1)(C) and 355(b)(1) generally require that the distributing corporation (distributing) and controlled corporation (controlled) each be engaged, immediately after the distribution, in the active conduct of a trade or business. Section 355(b)(2)(A) provides that a corporation shall be treated as engaged in the active conduct of a trade or business if and only if it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged. For this purpose, control is defined under section 368(c). All references to control in this preamble are references to control as defined in section 368(c).

Section 202 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345, 348) (TIPRA) amended section 355(b) by adding section 355(b)(3). Section 355(b)(3)(A), as amended by Division A, Section 410 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922, 2963), provides that in the case of any distribution made after May 17, 2006, a corporation shall be treated as meeting the requirement of section 355(b)(2)(A) if and only if such corporation is engaged in the active conduct of a trade or business. Section 355(b)(3)(B) provides that for purposes of section 355(b)(3)(A) (and, consequently, section 355(b)(2)(A)), all members of such corporation's separate affiliated group (SAG) shall be treated as one corporation (SAG rule). For purposes of the preceding sentence, a corporation's SAG is the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

Thus, the separate affiliated group of distributing (DSAG) is the affiliated group that consists of distributing as the common parent and all corporations affiliated with distributing through stock ownership described in section 1504(a)(1)(B) (regardless of whether the corporations are includible corporations under section 1504(b)). The separate affiliated group of controlled (CSAG) is determined in a similar manner (with controlled as the common parent). Accordingly, unlike prior law, a corporation is not treated as engaged in the active conduct of a trade or business solely as a result of substantially all of its assets consisting of stock, or stock and securities, of one or more

corporations that are merely controlled by it (immediately after the distribution) each of which is engaged in the active conduct of a trade or business.

Section 355(b)(2)(B) requires that the trade or business have been actively conducted throughout the five-year period ending on the date of the distribution (pre-distribution period). Section 355(b)(2)(C) provides that the trade or business must not have been acquired in a transaction in which gain or loss was recognized, in whole or in part, within the pre-distribution period. Section 355(b)(2)(D), as amended in 1987 and 1988, provides that control of a corporation which (at the time of acquisition of control) was conducting the trade or business must not have been directly or indirectly acquired by any distributee corporation or by distributing during the pre-distribution period in a transaction in which gain or loss was recognized, in whole or in part. See Public Law 100–203 (101 Stat. 1330, 1330–411 (1987)) and Public Law 100–647 (102 Stat. 3342, 3605 (1988)). For purposes of section 355(b)(2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as one distributee corporation. The requirements under section 355(b) are collectively referred to in this preamble as either the active trade or business requirement or the requirements of section 355(b).

Accordingly, the requirements of section 355(b) are generally satisfied if distributing and controlled each have engaged in the active conduct of a trade or business throughout the pre-distribution period, are so engaged immediately after the distribution, and there have been no acquisitions of control of distributing or controlled during such period.

The active trade or business requirement is one of several requirements that must be satisfied in order for a distribution to qualify under section 355. For example, section 355(a)(1)(B) states that a transaction must not be used principally as a device for distributing the earnings and profits of distributing, controlled, or both. In addition, § 1.355–2(b)(1) provides that section 355 will apply to a transaction only if it is carried out for one or more corporate business purposes.

The active trade or business requirement, in tandem with the device prohibition and business purpose requirement, limits a corporation's ability to convert dividend income into capital gain through the use of a section 355 distribution. See S. Rep. No. 83–1622, at 50–51 (1954) and *Coady* v. *Commissioner,* 33 TC 771, 777 (1960), *acq.,* 1965–2 CB 4, *aff'd,* 289 F.2d 490 (6th Cir. 1961). In *Coady,* the Tax Court stated that one purpose of section 355(b) is ''to prevent the tax-free separation of *active* and *inactive* assets into *active* and *inactive* corporate entities.'' The court also stated that a tax-free separation under section 355 ''will involve the separation only of those assets attributable to the carrying on of an active trade or business * * *.'' *Coady*, 33 TC at 777.

The IRS and Treasury Department are aware of a number of issues that have arisen regarding the active trade or business requirement, including issues arising as a result of the enactment of section 355(b)(3). The following sections describe the active trade or business requirement and the significant issues that are addressed in these proposed regulations. No inference should be drawn from these proposed regulations regarding the definition of trade or business or active trade or business under any other provision of the Code or Treasury regulations, even if such provision specifically references section 355. Comments are requested as to whether or the extent to which these proposed regulations should apply to other provisions that specifically reference section 355.

2. Overview of the Key Aspects of the Proposed Regulations

Principally, these proposed regulations provide guidance regarding the application of section 355(b)(3), the application of the acquisition rules in section 355(b)(2)(C) and (D) and the impact thereon of section 355(b)(3), and the determination of whether a corporation is engaged in a trade or business through the attribution of trade or business assets and activities from a partnership.

As discussed in section A.1. of this preamble, section 355(b)(3) treats all SAG members as one corporation. Accordingly, as discussed in detail in section B. of this preamble, these proposed regulations provide that subsidiary SAG members (SAG members that are not the common parent of such SAG) are treated like divisions of distributing or controlled, as the case may be. These proposed regulations also clarify that controlled may be a DSAG member during the pre-distribution period. Most significantly, these provisions treat a stock acquisition that results in a corporation becoming a subsidiary SAG member as an asset acquisition. As a result, the applicability of section 355(b)(2)(D) is substantially reduced. Further, as discussed in section E. of this preamble, this treatment alters the analysis regarding whether an existing business may be expanded as a result of a stock acquisition.

Notwithstanding that these proposed regulations provide that certain stock acquisitions may be treated as asset acquisitions under section 355(b)(3), purchases of stock of controlled during the pre-distribution period may be subject to section 355(a)(3)(B). See section F. of this preamble.

As discussed in detail in section C. and section D. of this preamble, these proposed regulations interpret section 355(b)(2)(C) and (D) to mean that a corporation generally cannot use its assets to acquire a trade or business to be relied on to facilitate a distribution under section 355. Accordingly, these proposed regulations generally prohibit acquisitions made in exchange for distributing's assets even if no gain or loss is recognized in connection with the acquisition. Further, these proposed regulations provide certain exceptions to the literal application of section 355(b)(2)(C) and (D) for acquisitions in which gain or loss is recognized where the purposes of that section are not violated. However, these proposed regulations do not disregard the recognition of gain or loss in transactions between affiliates unless the affiliates are members of the same SAG. See section G. of this preamble.

Section I. of this preamble explains how these proposed regulations clarify a corporation's ability to be attributed the trade or business assets and activities of a partnership. Most significantly, these partnership provisions yield results similar to the rules regarding the satisfaction of the continuity of business enterprise requirement, and thus allow a partner to be attributed the partnership's trade or business assets and activities where the partner owns a significant interest in the partnership.

B. TIPRA

Congress enacted section 355(b)(3) because it was concerned that, prior to a distribution under section 355, corporate groups conducting business in separate corporate entities often had to undergo elaborate restructurings to place active businesses in the proper entities to satisfy the active trade or business requirement. See, for example, H.R. Rep. No. 109–304, at 53, 54 (2005). By treating a SAG as one corporation, Congress believed that it would greatly reduce the need for such restructurings. However, the introduction of the affiliation-based SAG rule into the active trade or business requirement

significantly impacts the application of section 355(b)(2) in certain situations.

Accordingly, consistent with congressional intent, these proposed regulations provide several rules interpreting section 355(b)(3) in a manner that diminishes the need for pre-distribution restructurings while fully integrating the various provisions in section 355(b). These rules are intended to more closely reflect the way corporate groups structure their businesses while, at the same time, ensuring that the purposes underlying section 355(b)(2)(C) and (D) are not circumvented.

Specifically, to accomplish these objectives the IRS and Treasury Department believe that it is appropriate to apply the SAG rule by disregarding the separate existence of all subsidiary SAG members for purposes of determining whether distributing and controlled satisfy the requirements of section 355(b).

1. SAG Rule Applicable During the Pre-Distribution Period

The IRS and Treasury Department believe that it is appropriate to apply the SAG rule for purposes of determining whether the trade or business was actively conducted throughout the pre-distribution period and whether the requirements of section 355(b)(2)(C) or (D) have been violated.

The SAG rule applies for purposes of determining whether distributing and controlled are engaged in the active conduct of a trade or business immediately after the distribution. Specifically, the legislative history to section 355(b)(3) describes the corporations included in the DSAG and CSAG by reference to post-distribution affiliation. See H.R. Rep. No. 109–455, at 88 (2006) (Conf. Rep.); H.R. Rep. No. 109–304, at 54 (2005). However, there is nothing in the statute or legislative history that precludes the SAG rule from applying throughout the pre-distribution period.

The IRS and Treasury Department believe that applying the SAG rule throughout the pre-distribution period is consistent with the single-entity approach. If the SAG rule is not applied during the pre-distribution period, there may be unintended consequences. For example, assume that an active trade or business is segmented among the SAG members in a manner that precludes any one member from individually being treated as engaged in an active trade or business. Under the SAG rule the segments are aggregated and may be treated as a single active trade or business immediately after the distribution. However, if the SAG rule is not applied throughout the pre-distribution period, there would be no five-year active trade or business because no one member would be engaged in that trade or business. The IRS and Treasury Department do not believe there is any policy reason to apply the SAG rule in such a disparate manner. Accordingly, these proposed regulations apply the SAG rule throughout the pre-distribution period. This approach is consistent with Congressional intent to view SAGs as an aggregate for purposes of the active trade or business requirement.

Because the SAG rule treats all SAG members as one corporation, the separate existence of subsidiary SAG members are disregarded and all assets (and activities) owned (and performed) by SAG members are treated as owned (and performed) by distributing or controlled, as the case may be, for purposes of determining whether distributing or controlled is engaged in a five-year active trade or businesses. Therefore, where one DSAG or CSAG member satisfies the active trade or business requirement, distributing or controlled, as the case may be, satisfies the active trade or business requirement.

Consistent with the foregoing, these proposed regulations provide that the SAG rule also applies for purposes of determining whether there has been an impermissible acquisition, as discussed in section C. of this preamble, of a trade or business during the pre-distribution period under section 355(b)(2)(C) or (D). Because the SAG rule disregards the separate existence of subsidiary SAG members, these proposed regulations generally treat stock acquisitions that result in a corporation becoming a subsidiary SAG member as a direct acquisition of any assets (or activities) owned (or performed) by the acquired corporation. Further, these proposed regulations generally disregard transfers of assets (or activities) that are owned (or performed) by the SAG immediately before and immediately after the transfer. Such transfers cannot result in an acquisition. Under the SAG rule, such transfers have the effect of a transfer between divisions of a single corporation.

2. The DSAG May Include CSAG Members Throughout the Pre-Distribution Period

The IRS and Treasury Department believe that it is appropriate to include the CSAG members in the DSAG during the pre-distribution period if the applicable affiliation requirements are satisfied. The IRS and Treasury Department believe this approach is consistent with the purposes of section 355(b)(3) and the SAG rule's general single-entity approach, and provides flexibility for the division of SAG members between distributing and controlled.

For example, assume that during the pre-distribution period, segments or portions of the business to be conducted by controlled are held by distributing (or other subsidiaries that are not directly or indirectly owned by controlled) and that distributing intends to transfer those portions of the business to controlled immediately prior to the distribution. If the DSAG does not include the CSAG members throughout the pre-distribution period, it is possible that neither SAG would be engaged in the active conduct of that trade or business throughout the pre-distribution period, because neither SAG would have all the appropriate segments of that business to satisfy the active trade or business requirement. The IRS and Treasury Department believe that such a result is inconsistent with the purposes of section 355(b)(3). Accordingly, by including the CSAG members in the DSAG throughout the pre-distribution period if the ownership requirements are satisfied, these proposed regulations give appropriate credit to five-year active trades or businesses regardless of how the assets and activities may be owned (and performed) by the SAG members throughout the pre-distribution period.

3. Acquisitions of Stock in Subsidiary SAG Members

Section 355(b)(3) treats SAG members as one corporation for purposes of satisfying the requirements of section 355(b). As a result, the SAG rule alters the application of section 355(b)(2)(C) and (D) with respect to the acquisition of stock of a corporation that is or becomes a subsidiary SAG member. Further, because section 355(b)(3) supplanted the holding company rule in section 355(b)(2)(A), section 355(b)(2)(D) is now only applicable to certain acquisitions of stock of distributing and certain acquisitions of stock of controlled.

The SAG rule alters the application of section 355(b)(2)(C) and (D) with respect to the acquisition of stock of a corporation that is or becomes a subsidiary SAG member. Section 355(b)(3) treats SAG members as one corporation for purposes of satisfying section 355(b). Consequently, a transaction that results in a corporation—including controlled—becoming a subsidiary SAG member is treated as a direct acquisition of all the assets (and activities) owned (and performed) by the acquired corporation

at the time of the acquisition. Thus, such an acquisition is tested under section 355(b)(2)(C) rather than section 355(b)(2)(D). Nevertheless, as discussed in sections B.4 and C.3.a.ii. of this preamble, section 355(b)(2)(D) has continuing limited application.

In addition, an acquisition that results in a corporation becoming a subsidiary SAG member in a transaction in which gain or loss is recognized might satisfy the requirements of section 355(b)(2)(C) as an expansion of one of the acquiring SAG's existing businesses, as discussed in section E. of this preamble. Finally, because the SAG rule treats subsidiary SAG members like divisions, the acquisition of additional stock of a current subsidiary SAG member has no effect for purposes of applying section 355(b)(2)(C).

4. Acquisitions of Control of Controlled Where It Is Not a DSAG Member

While section 355(b)(2)(D) is not applicable to acquisitions of stock of subsidiary SAG members, the requirements of section 355(b)(2)(D) must be satisfied where the DSAG acquires control of controlled where controlled is not and does not become a DSAG member prior to the distribution. This rule applies where distributing acquires stock constituting control of controlled but not stock meeting the requirements of section 1504(a)(2).

C. Acquisitions of a Trade or Business

Section 355(b)(2)(C) and (D) generally provide that a trade or business acquired, directly or indirectly, during the pre-distribution period will not satisfy the active trade or business requirement unless it was acquired in a transaction in which no gain or loss was recognized. The IRS and Treasury Department believe that these provisions have been and should continue to be interpreted and applied in a manner consistent with the overall purposes of section 355. For example, in certain situations, transactions in which gain or loss is recognized have been found not to violate the purposes of section 355(b)(2)(C) and (D). See, for example, *C.I.R.* v. *Gordon*, 382 F.2d 499 (2d Cir.1967), *rev'd on other grounds*, 391 U.S. 83 (1968) (discussed in section C.2. of this preamble). Additionally, while the enactment of section 355(b)(3) substantially revised how distributing and controlled may satisfy the active trade or business requirement, TIPRA did not contain conforming amendments to section 355(b)(2)(C) and (D). As such, the IRS and Treasury Department also believe that a purpose-based interpretation of section 355(b)(2) is essential to harmonize these provisions. Accordingly, these proposed regulations interpret and apply section 355(b)(2)(C) and (D), and section 355(b)(3), in a manner consistent with their purpose, even if not always consistent with the literal language of the statute.

1. Purpose of Section 355(b)(2)(C) and (D)

Section 355 ''contemplates that a tax-free separation shall involve only the separation of assets attributable to the carrying on of an active business.'' S. Rep. No. 83–1622, at 50 (1954). The active trade or business requirement is intended to ensure that only these types of separations qualify under section 355. Further, it operates as an additional safeguard to the device prohibition (a prohibition against disguised dividends) in section 355(a)(1)(B).

As discussed in section A. of this preamble, the active trade or business requirement is designed to limit the potential for the conversion of dividend income into capital gain through a section 355 distribution. Specifically, section 355(b)(2)(C) and (D) is intended to prevent dividend avoidance otherwise available through the purchase of a new business in order to facilitate a tax-free distribution under section 355. See *Gordon,* 382 F.2d at 506–507 (stating that ''[t]o safeguard against this possibility, subsections (b)(2)(C) and (D) prohibit acquisition of a trade or business, or of a corporation, in a transaction in which gain or loss was recognized.''). Thus, the statute prohibits acquisitions of a trade or business in which gain or loss is recognized. Nevertheless, the recognition of gain or loss, in and of itself, does not violate the purposes of section 355. Rather, recognition of gain or loss is generally indicative of the type of consideration used in the transaction. Typically, a transaction in which gain or loss is recognized consists of an acquisition in exchange for assets. On the other hand, a transaction in which no gain or loss is recognized typically consists of an acquisition in exchange for the corporation's equity.

Accordingly, the IRS and Treasury Department believe that the common purpose of section 355(b)(2)(C) and (D) is to prevent distributing from using assets—instead of its stock or stock of a corporation in control of distributing—to acquire a new trade or business in anticipation of distributing that trade or business (or facilitating the distribution of another trade or business) to its shareholders in a tax-free distribution. A distribution of a corporation holding assets that would have been used to effect a purchase generally would be treated as a dividend and section 355 was not intended to allow a tax-free separation of such assets. Acquiring a new trade or business using these assets and distributing it (or an existing trade or business) would effectively accomplish such a separation, and should not qualify under section 355.

Complementing the principle that the common purpose of section 355(b)(2)(C) and (D) is to prevent distributing from using it assets—instead of its stock, or stock of a corporation in control of distributing—to acquire a new trade or business is the notion that section 355 is intended to apply to separations of active trades or businesses with which the participants have a historic relationship. Section 355, like the reorganization provisions, involves the maintenance by the shareholders of a continuing interest in their business or businesses in modified corporate forms. For section 355 to apply to a divisive transaction, it is essential that distributing and its shareholders have a historic relationship with the active trades or businesses in the two resulting corporations. See, for example, § 1.355–1(b) (''[section 355] applies only to the separation of existing businesses that have been in active operation for at least five years * * * and which, in general, have been owned, directly or indirectly, for at least five years by the distributing corporation''). These requirements ensure that the historic owners of the acquired trade or business are participants in the divisive transaction and minimize the potential for transactions that violate the common purpose of section 355(b)(2)(C) and (D).

Where distributing issues its own equity (or uses the equity of a corporation in control of distributing) to acquire an active trade or business in a transaction in which no gain or loss is recognized, distributing is not acquiring the trade or business in exchange for its assets and the historic owners of the trade or business will be participants in the divisive transaction. In such cases, the common purpose of section 355(b)(2)(C) and (D) is carried out.

Finally, an additional purpose of section 355(b)(2)(D) is to prevent a distributee corporation from acquiring control of distributing in anticipation of a distribution to which section 355 would otherwise apply, enabling the disposition of controlled without the proper recognition of corporate level gain. See H.R. Rep. No. 100–391, at 1080, 1082–1083 (1987).

2. Current Law and the § 1.355–3(b)(4) Regulations

Under current law, several authorities depart from the literal language of section 355(b)(2)(C) and (D) in order to carry out the common purpose underlying section 355(b)(2)(C) and (D). For example, in *Gordon*, gain was recognized when distributing transferred a trade or business to controlled. The Second Circuit concluded that, even though gain was recognized, section 355(b)(2)(C) was not violated because new assets were not brought within the combined corporate shells of distributing and controlled. Therefore, the common purpose of section 355(b)(2)(C) and (D) was not violated. Furthermore, Rev. Rul. 69–461 (1969–2 CB 52) held that a first-tier subsidiary's taxable distribution of stock of a second-tier subsidiary to its parent did not violate section 355(b)(2)(D). The ruling stated that section 355(b)(2)(D) is intended to prevent the acquisition of control of a corporation from a party not within the direct or indirect control of distributing. In addition, Rev. Rul. 78–442 (1978–2 CB 143) held that gain under section 357(c) on the transfer from distributing to controlled does not violate section 355(b)(2)(C). Rev. Rul. 78–442 stated that section 355(b)(2)(C) is intended to prevent the acquisition of a trade or business by distributing or controlled from an outside party in a taxable transaction within five years of a distribution.

Similarly, § 1.355–3(b)(4) (generally applicable to distributions on or before December 15, 1987, but applied in various situations by the IRS administratively to distributions occurring after that date) provides an exception from the literal language of section 355(b)(2)(C) and (D) for the direct or indirect acquisition of a trade or business by one member of an affiliated group from another member of the group, stating that an acquisition from another member of the affiliated group ''is not the type of transaction to which section 355(b)(2)(C) and (D) is intended to apply.'' See § 1.355–3(b)(4)(iii).

Section 1.355–3(b)(4) also departs from the literal language of section 355(b) in providing that a trade or business acquired, directly or indirectly, within the pre-distribution period in a transaction in which the basis of the assets acquired was not determined in whole or in part by reference to the transferor's basis does not qualify under section 355(b)(2), even though no gain or loss was recognized by the transferor. See § 1.355–3(b)(4)(i). The reason for this departure is that in some circumstances a transaction in which no gain or loss is recognized may nevertheless constitute a prohibited acquisition of a trade or business in exchange for assets.

3. The Proposed Regulations

Consistent with current law (and § 1.355–3(b)(4)), these proposed regulations generally prohibit acquisitions in which gain or loss was recognized but apply section 355(b)(2)(C) and (D) in a manner consistent with their purposes. Accordingly, these proposed regulations provide for certain exceptions for acquisitions in which gain or loss is recognized, and prohibit certain transactions in which no gain or loss is recognized.

a. Certain Transactions in Which Recognized Gain or Loss Is Disregarded

Under these proposed regulations, certain acquisitions are excepted from the general rule under section 355(b)(2)(C) and (D) that a trade or business, or control of a corporation engaged in a trade or business, cannot satisfy the active trade or business requirement if it was acquired during the pre-distribution period in a transaction in which gain or loss was recognized. These transactions are so excepted because they do not violate the purposes of section 355(b)(2)(C) and (D).

i. Certain Acquisitions by the DSAG or CSAG

These proposed regulations provide a number of exceptions to the application of section 355(b)(2)(C) and (D) not contained in the current regulations (or § 1.355–3(b)(4)). One of these exceptions disregards any gain or loss recognized in connection with an acquisition by the CSAG from the DSAG of a trade or business, an interest in a partnership engaged in a trade or business, or stock of a corporation engaged in a trade or business. This exception is appropriate because it is not a use of distributing's assets to acquire the trade or business

Another exception disregards gain or loss recognized in an acquisition solely as a result of the payment of cash to shareholders for fractional shares where the cash paid represents a mere rounding off of the fractional shares in the exchange and is not separately bargained for consideration. The IRS and Treasury Department believe that this is not the type of transaction to which section 355(b)(2)(C) or (D) is intended to apply. Although such a transaction involves a small use of assets, these proposed regulations except such acquisitions because the small amount of assets are not separately bargained for and are used merely to simplify the exchange. Other authorities reach similar conclusions in the context of reorganizations. See Rev. Rul. 66–365 (1966–2 CB 116), amplified by Rev. Rul. 81–81 (1981–1 CB 122) (concluding that cash in lieu of fractional shares does not violate the solely for voting stock requirement of section 368(a)(1)(B) and (C) because it was merely a mathematical rounding off for simplicity, and the transaction ''was for all practical purposes ''solely in exchange for voting stock''').

In addition, as discussed in section G. of this preamble, these proposed regulations provide a limited exception for taxable acquisitions from affiliates that are members of the same SAG. Specifically, acquisitions between SAG members (where the assets (or activities) are owned (or performed) by the SAG immediately before and immediately after the transfer) are disregarded whether they are taxable or not.

Like the current regulations, these proposed regulations provide that acquisitions that expand a pre-existing business are generally exempted from the nonrecognition requirement. See § 1.355–3(b)(3)(ii). While these transactions may involve the use of the DSAG's or CSAG's assets, they are not acquisitions of a new or different trade or business. Because the DSAG or CSAG, as the case may be, is already in the business, such transactions are not considered acquisitions of a trade or business under section 355(b)(2)(C) and (D).

ii. Certain Acquisitions by a Distributee Corporation

Consistent with the principles of Rev. Rul. 74–5 (1974–1 CB 82), obsoleted by Rev. Rul. 89–37 (1989–1 CB 107), these proposed regulations disregard the recognition of gain or loss in applying section 355(b)(2)(D) to certain acquisitions of the stock of distributing by a distributee corporation. Prior to the 1987 and 1988 amendments noted in section A.1 of this preamble, section 355(b)(2)(D) was not violated in a case where distributing distributed the stock of controlled even though a purchaser acquired distributing's stock during the pre-distribution period in a transaction in which gain or loss was recognized. See Rev. Rul. 74–5 (reasoning that the purpose of section 355(b)(2)(D) was to prevent distributing, rather than the shareholder of distributing, from accumulating excess funds to purchase the stock of a corporation engaged in an active trade or business). However, Rev. Rul. 74–5 held that the purchaser could not then further distribute the stock of controlled until five years after such

purchase, reasoning that the purchaser, the distributing corporation in the second distribution, indirectly acquired the stock of controlled through another corporation, the distributing corporation in the first distribution.

The 1987 and 1988 amendments to section 355(b)(2)(D) prohibited such transactions because of a concern that such acquisitions were similar to transactions that permitted a corporation to dispose of an appreciated subsidiary without the proper recognition of gain contrary to the repeal of the *General Utilities* doctrine. For example, assume P, a corporation, acquired the stock of D in a transaction in which gain or loss was recognized and D immediately distributed the stock of C to P in a section 355 transaction. P would allocate its basis in the newly acquired D stock between the D stock and the C stock received in the distribution. P could then potentially sell the C stock without the appropriate recognition of gain. See H.R. Rep. No. 100–391, at 1080, 1082–1083 (1987).

However, there are transactions that violate the literal requirements of section 355(b)(2)(D) but do not violate the purpose of the 1987 and 1988 amendments. For example, assume that for more than five years, T, a corporation, owned all of the stock of D, which in turn owned all the stock of C. Throughout this period, D and C have each engaged in the active conduct of a trade or business. In year 6, P acquires the stock of T in a transaction in which gain or loss is recognized, and holds the T stock with a cost basis determined under section 1012. In year 7, P liquidates T in a transaction to which section 332 applies and in which no gain or loss is recognized, thereby eliminating its cost basis in the T stock. Thereafter, P holds the D stock with a basis equal to T's basis in the D stock. In year 8, D distributes the C stock to P. Under these facts, P cannot dispose of the D or C stock without recognizing the same amount of gain or loss that T would have recognized.

Similarly, assume the same facts as the previous example, except that in year 6 P acquires all of T's assets, including the D stock, in exchange for P stock and cash in a reorganization described in section 368(a)(1)(A). Because all of the cash is distributed to the T shareholders, T does not recognize any gain, and P's basis in the D stock is equal to T's basis in the D stock. See section 362(b). In year 7, D distributes the C stock to P. Under these facts, P cannot dispose of the D or C stock without recognizing the same amount of gain or loss that T would have recognized.

The IRS and Treasury Department believe that the distributee corporation language in section 355(b)(2)(D)(i) is intended only to prevent transactions that are contrary to the repeal of the *General Utilities* doctrine. In both of the examples just described, neither the D stock nor C stock can be disposed of in a manner that is contrary to the repeal of the *General Utilities* doctrine. Accordingly, these proposed regulations provide that section 355(b)(2)(D) is not violated where there is a direct or indirect acquisition by a distributee corporation of control of distributing in one or more transactions in which gain or loss is recognized where the basis of the acquired distributing stock in the hands of the distributee corporation is determined in whole by reference to the transferor's basis. However, consistent with the principles of Rev. Rul. 74–5, this rule is only applicable with respect to a distribution by the acquired distributing, and does not apply for purposes of any subsequent distribution by any distributee corporation.

b. Certain Nonrecognition Transactions Treated as Recognition Transactions

Because the IRS and Treasury Department believe that acquisitions made in exchange for assets violate the common purpose of section 355(b)(2)(C) and (D) even if no gain or loss is recognized, these proposed regulations provide that such transactions are treated as transactions in which gain or loss is recognized.

i. Acquisitions in Exchange for Assets

As discussed in section C.1 of this preamble, the common purpose underlying section 355(b)(2)(C) and (D) is that distributing generally should not be able to use its assets to acquire a new trade or business in anticipation of distributing that trade or business (or facilitating the distribution of another trade or business) to its shareholders in a tax-free transaction. Similarly, and also discussed in section C.1. of this preamble, section 355(b), by permitting the use of distributing stock to acquire a trade or business, ensures a historic relationship between the distributing shareholders and the trades or businesses relied upon to satisfy the active trade or business requirement.

The following examples illustrate distributing's use of its assets to acquire a new trade or business.

First, assume that D, a corporation that does not directly conduct a five-year active trade or business, owns all of the stock of C, a corporation with a five-year active trade or business. D wishes to spin-off C to its shareholders, but to do so D must satisfy the active trade or business requirement. Accordingly, D contributes assets to an unrelated partnership that is engaged in a five-year active trade or business in a transaction to which section 721 applies in exchange for an interest in the partnership that otherwise satisfies the requirements for D to be attributed the trade or business assets and activities of the partnership, as discussed in section I. of this preamble. Two years after the transfer, when D's only active trade or business is the business conducted by the partnership, D distributes the C stock pro rata to the D shareholders.

Alternatively, assume that D, a corporation with a five-year active trade or business, transfers assets to unrelated T, a corporation with a five-year active trade or business, in a transaction to which section 351 applies in exchange for an amount of T stock constituting control. Two years after the transfer, when T's only active trade or business is the business T conducted before D's transfer, D distributes the T stock pro rata to the D shareholders.

Similarly, assume that D, a corporation with a five-year active trade or business, owns all of the stock of C, a corporation that does not have a five-year active trade or business but has other assets. To cause C to satisfy the active trade or business requirement, D arranges for C to acquire a five-year active trade or business from T, an unrelated corporation, in a reorganization described in section 368(a)(1)(A). In the reorganization, the shareholders of T receive solely common stock of C representing 20 percent or less of the voting power of all classes of C stock. Two years after the reorganization, D distributes the C stock pro rata to the D shareholders.

In each of these examples, D has directly or indirectly acquired a trade or business in exchange for assets. See and compare Situation 2 of Rev. Rul. 2002–49 (2002–2 CB 288) (corporation's use of appreciated securities to acquire a trade or business of a partnership in a transaction to which section 721 applies is treated as an acquisition in which gain or loss was recognized); section 4.01(29) of Rev. Proc. 2007–3 (2007–1 IRB 108) (the IRS will not ordinarily rule where distributing acquires control of controlled by transferring inactive assets in a transaction meeting the requirements of section 351(a) or section 368(a)(1)(D) and in which no gain or loss is recognized). While these transactions satisfy the literal requirements of section 355(b)(2)(C) or (D), the underlying common purpose of those provisions has been violated. In each case, distributing has acquired in exchange for distributing's assets, either

directly or indirectly through the issuance of controlled stock the trade or business to be relied on by distributing or controlled.

Furthermore, in each of these examples, the historic owners have supplied a trade or business for distributing or controlled, but they are not participants in the divisive transaction. Not being shareholders of D, the position of the historic owners of the acquired business is not altered by the distribution of the controlled stock. Accordingly, neither distributing nor the distributing shareholders have a historic relationship with the separated businesses, and the distribution of the controlled stock is not the type of transaction to which section 355 was intended to apply.

By contrast, had D issued its own stock in the reorganization in the last example, the substance of the transaction would be different. D would not have indirectly acquired a trade or business in exchange for assets but rather for its own equity. Because D would not be purchasing a business for its shareholders, the distribution is not a substitute for a taxable distribution of the consideration that would have been used in the purchase. Furthermore, where D stock is used as the consideration the former T shareholders would have joined D's shareholder base, and become participants in the divisive reorganization.

These proposed regulations prohibit the acquisition of a trade or business directly or indirectly in exchange for assets in order to ensure that the common purpose of section 355(b)(2)(C) and (D) are satisfied. Such an acquisition also would include a swap of an interest in an existing five-year active trade or business for an interest in a new active trade or business. This type of an acquisition could occur through the formation of a joint venture structure.

For example, assume D and X form a partnership joint venture in which D contributes a five-year active trade or business (ATBD) and X contributes a different five-year active trade or business (ATBX). D and X each receive a 50-percent interest in the partnership. D's interest is sufficient to satisfy the requirements for D to be attributed the partnership's trade or business assets and activities (as discussed in section I. of this preamble). Prior to a potential section 355 distribution by D, and within five years of the contribution, the partnership sells ATBD.

D cannot rely on ATBX until five years after the acquisition of its interest in the partnership because, in effect, at the time of the contributions D exchanged a 50-percent undivided interest in ATBD for a 50-percent undivided interest in ATBX. Therefore, D acquired its interest in ATBX in exchange for its assets. While this was a transaction in which no gain or loss was recognized, the exchange of assets violates the common purpose of section 355(b)(2)(C) and (D). Further, the historic owner of ATBX would not participate in any distribution of controlled stock by D. Accordingly, such a distribution would not be the type of transaction to which section 355 was intended to apply.

Similarly, a corporation can effectively swap its assets through the issuance of stock of a subsidiary (including controlled). Accordingly, these proposed regulations provide a specific rule to address tax-free acquisitions involving the issuance of subsidiary stock. These proposed regulations provide that if a SAG directly or indirectly owns stock of a subsidiary (including a subsidiary SAG member) and the subsidiary directly or indirectly acquires a trade or business, an interest in a partnership engaged in a trade or business, or stock of a corporation engaged in a trade or business from a person other than such SAG in exchange for stock of such subsidiary in a transaction in which no gain or loss is recognized (the acquisition), solely for purposes of applying section 355(b)(2)(C) or (D) with respect to the trade or business, partnership interest, or stock acquired by the subsidiary in the acquisition, the subsidiary's stock directly or indirectly owned by the SAG immediately after the acquisition is treated as acquired at the time of the acquisition in a transaction in which gain or loss is recognized.

This rule reflects the fact that although the acquiring subsidiary did not make the acquisition in exchange for its assets (it issued its own stock), the SAG that owns stock of the subsidiary has exchanged an indirect interest in the subsidiary's assets for an indirect interest in the trade or business acquired by the subsidiary in the acquisition. Thus, the SAG has indirectly acquired a portion of the subsidiary's newly acquired trade or business (equal to the shareholder's stock interest in the subsidiary immediately after the acquisition) in exchange for assets. Further, the IRS and Treasury Department believe that it would be inappropriate to allow such acquired trade or business to be relied on to satisfy the active trade or business requirement within five years of its acquisition because the historic owners of that trade or business would not participate in any distribution of controlled stock.

However, because such a transaction does not result in an acquisition of any pre-existing trade or business of the subsidiary, this rule merely treats the SAG's stock in the subsidiary immediately after the acquisition as acquired in a gain or loss transaction for purposes of applying section 355(b)(2)(C) or (D) to the newly acquired trade or business. Further, the impact of such a transaction on the ability to rely on the newly acquired trade or business to satisfy the requirements of section 355(b) depends upon how much subsidiary stock the SAG owns immediately after the transaction.

For example, assume D owns all of the sole class of stock of S, a corporation that does not conduct a five-year active trade or business. T, an unrelated corporation with a five-year active trade or business (ATBT), merges into S in a reorganization described in section 368(a)(1)(A) and (D) solely in exchange for 80 percent of the S stock, and no gain or loss is recognized. Immediately after the merger, D owns only 20 percent of the sole class of S stock. Solely for purposes of determining whether ATBT can be relied on to satisfy the active trade or business requirement, D is treated as having acquired its 20 percent of the S stock at the time of the merger of T into S in a transaction in which gain or loss was recognized. Accordingly, as described in section D.2.a. of this preamble regarding certain multi-step acquisitions of a subsidiary SAG member, if D subsequently acquired the 80 percent of the S stock held by the other shareholders solely in exchange for D voting stock in a reorganization described in section 368(a)(1)(B) in which no gain or loss was recognized, S would become a DSAG member and D could rely on ATBT to satisfy the active trade or business requirement.

Accordingly, in light of all of these concerns, these proposed regulations generally provide that acquisitions paid for in whole or in part, directly or indirectly, with assets of the DSAG will be treated as acquisitions in which gain or loss is recognized. However, if a DSAG member or controlled acquires the trade or business solely in exchange for distributing stock, distributing acquires control of controlled solely in exchange for distributing stock, or controlled acquires the trade or business from distributing solely in exchange for stock of controlled, in a transaction in which no gain or loss is recognized, the requirements of section 355(b)(2)(C) and (D) are satisfied. Such acquisitions are

not made in exchange for assets of the DSAG.

An additional question arising under section 355(b)(2)(C) and (D) is whether the assumption of liabilities is treated as a payment of money or other property, and hence the use of assets. See *United States* v. *Hendler*, 303 U.S. 564, reh'g denied, 304 U.S. 588 (1938) (viewing an assumption of a liability by a transferee as in substance a payment to the transferor). Congress has indicated that the assumption of liabilities is not to be treated as the payment of money or other property in certain transactions in which no gain or loss is recognized. For example, the assumption of liabilities is not treated as the payment of money or other property in certain exchanges to which section 351 or 361 applies. See section 357(a). Further, the assumption of liabilities does not violate the solely for voting stock requirement in a reorganization described in section 368(a)(1)(C) where the acquiring corporation does not otherwise exchange money or other property. See section 368(a)(1)(C) and (a)(2)(B). Because Congress has granted this special treatment for liability assumptions in certain nonrecognition transactions, the IRS and Treasury Department believe that similar treatment is generally appropriate for purposes of section 355(b)(2)(C) and (D). Accordingly, these proposed regulations provide that the assumption by the DSAG or CSAG of liabilities of a transferor shall not, in and of itself, be treated as the payment of assets if such assumption is not treated as the payment of money or other property under any other applicable provision.

Finally, these proposed regulations clarify that an acquisition to which section 304(a)(1) applies does not satisfy the requirements of section 355(b)(2)(C) or (D). The IRS and Treasury Department believe that a stock acquisition to which section 304 applies is a transaction in which gain or loss is recognized for purposes of section 355(b)(2)(C) and (D) even if it merely results in the transferor's receipt of dividend income. These proposed regulations clarify that, regardless of the tax consequences to the transferor, such a transaction is an acquisition made in exchange for assets, and therefore does not satisfy the requirements of section 355(b)(2)(C) and (D).

ii. Partnership Distributions

These proposed regulations provide that an acquisition consisting of a distribution from a partnership is generally treated as a transaction in which gain or loss is recognized because it constitutes an acquisition in exchange for assets. That is, the distributee partner is generally exchanging an indirect interest in all the assets of the partnership for a direct interest in the property distributed. However, these proposed regulations provide that if the corporation is already attributed the trade or business assets and activities of a partnership, the corporation's acquisition of such trade or business assets and activities from the partnership is not, in and of itself, the acquisition of a new trade or business. Further, these proposed regulations provide that an acquisition consisting of a pro rata distribution from a partnership of stock or an interest in a lower-tier partnership is not an acquisition in exchange for assets to the extent the distributee partner did not acquire the interest in the distributing partnership during the pre-distribution period in a transaction in which gain or loss was recognized and to the extent the distributing partnership did not acquire the distributed stock or partnership interest within such period. In such a case, the distributee partner has merely exchanged an indirect interest for a direct interest in the distributed stock or partnership interest, and continues to possess the same indirect interest in the remaining assets of the partnership.

iii. Lack of Transferred Basis

Section 1.355–3(b)(4)(i) provides that a trade or business acquired, directly or indirectly, within the pre-distribution period in a transaction in which the basis of the assets acquired was not determined in whole or in part by reference to the transferor's basis does not qualify under section 355(b)(2), even though no gain or loss was recognized by the transferor. These proposed regulations do not include a similar provision. The IRS and Treasury Department believe that the prohibition against acquisitions in exchange for assets fully addresses such acquisitions.

c. Application of Section 355(b)(2)(C) and (D) to Predecessors

Unlike § 1.355–3(b)(4)(i), which only took ''a predecessor in interest'' into account for purposes of applying section 355(b)(2)(D), these proposed regulations provide that any reference to a corporation includes a reference to a predecessor of such corporation in applying both section 355(b)(2)(C) and (D). The IRS and Treasury Department believe that predecessors should be taken into account in applying both section 355(b)(2)(C) and (D) because the same policy concerns exist regardless of whether the transaction involves the acquisition of assets or stock. For this purpose, the proposed regulations define a predecessor of a corporation as a corporation that transfers its assets to such corporation in a transaction to which section 381 applies. The IRS and Treasury Department believe that it is appropriate to take predecessors into account in applying these provisions in order to appropriately minimize the significance of which corporation is the acquiror and which corporation is the target.

Further, because the SAG rule effectively treats SAG members as a singly-entity for purposes of section 355(b), these proposed regulations also apply section 355(b)(2)(C) and (D) to acquisitions during the pre-distribution period by corporations that later become DSAG or CSAG members. These types of acquisitions are similar to predecessor asset acquisitions.

4. Requests for Comments Regarding Exceptions to Section 355(b)(2)(C) and (D)

The IRS and Treasury Department request comments regarding whether any additional exceptions to section 355(b)(2)(C) and (D) are appropriate. In particular, the IRS and Treasury Department request comments regarding whether acquisitions in which gain is recognized solely as a result of the application of section 367 should be treated as violating section 355(b)(2)(C) or (D). The IRS and Treasury Department also request comments regarding whether an exception should exist for taxable acquisitions made by distributing solely in exchange for distributing stock because such acquisitions are not made in exchange for distributing's assets and do not appear to violate the common purpose of section 355(b)(2)(C) and (D).

In addition, the IRS and Treasury Department request comments regarding whether a redemption of stock should be a transaction to which section 355(b)(2)(C) or (D) applies. Under current law, no relief is provided for such transactions. See *McLaulin* v. *Commissioner*, 276 F.3d 1269 (11th Cir. 2001) (concluding that section 355(b)(2)(D) applies when distributing acquires control of a subsidiary through a redemption of subsidiary stock). Compare Rev. Rul. 57–144 (1957–1 CB 123). Specifically, comments are requested on whether all types of redemptions should be subject to the same rule, whether the treatment of redemptions should be determined by the source of payment, whether the redemption constitutes an indirect exchange for assets of distributing or controlled, and the method of making these determinations. Alternatively, the

IRS and Treasury Department request comments on whether an exception should be provided for redemptions of shareholders that exercise dissenters' rights. Compare Rev. Rul. 68–285 (1968–1 CB 147) (concluding that cash paid to dissenting target corporation shareholders by the target corporation does not violate the solely for voting stock requirement of section 368(a)(1)(B)) with Rev. Rul. 73–102 (1973–1 CB 186) (concluding that cash paid to dissenting target corporation shareholders by the acquiring corporation is treated as money or other property paid by the acquiring corporation for the properties of the target corporation in a reorganization under section 368(a)(1)(C)). These proposed regulations do not include an exception for redemptions generally or for those in connection with the exercise of dissenters' rights.

Finally, the IRS and Treasury Department request comments regarding whether a transaction in which a distributee corporation acquires in a transaction in which no gain or loss is recognized newly issued stock of distributing in exchange for money or property previously acquired for cash during the pre-distribution period should be treated as a transaction in which gain or loss is recognized. For example, assume D and C have each engaged in the active conduct of a trade or business for more than five years. During the pre-distribution period, P, an unrelated corporation, purchases trucks and transfers them to D in exchange for D stock meeting the requirements of section 368(c) in a transaction to which section 351 applies. No gain or loss is recognized. D subsequently distributes all the C stock to P in a separate transaction within five years of P's acquisition of the D stock. Notwithstanding that this transaction satisfies the literal requirements of section 355(b)(2)(D), it appears to violate the *General Utilities* doctrine because it permits the distributee corporation, P, to receive a fair market value basis (or close to a fair market value basis) in the distributing stock, enabling the potential sale of controlled stock without the appropriate recognition of gain. Additionally, the IRS and Treasury Department are studying whether the principles of the foregoing rule should be extended to any distributee in regulations under section 355(d), and request comments on this point.

D. Treatment of Certain Multi-Step Acquisitions

These proposed regulations provide specific rules regarding the application of section 355(b)(2)(C) and (D) to certain multi-step acquisitions. Based on the interpretation of section 355(b)(2)(D), and the enactment of section 355(b)(3), the IRS and Treasury Department believe that it is appropriate to apply section 355(b)(2)(C) and (D) to multi-step acquisitions in a consistent manner. Further, the IRS and Treasury Department believe that it is appropriate to treat certain multi-step acquisitions of target corporation stock as satisfying the requirements of section 355(b)(2)(C) or (D) (as applicable) notwithstanding that some portion of the stock may have been acquired in a separate transaction in which gain or loss was recognized.

1. Multi-Step Acquisition of Control of Distributing or Controlled

a. Direct Acquisitions

Section 355(b)(2)(D) provides that control of distributing or controlled may be acquired within the pre-distribution period provided that ''in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.'' The IRS and Treasury Department interpret this language to mean that at the time control is first acquired, the acquiring corporation (or its SAG) is required to own stock meeting the requirements of section 368(c) that was acquired in one or more transactions in which no gain or loss was recognized or by reason of such transactions combined with acquisitions before the beginning of the pre-distribution period. Thus, at the time an acquiring corporation (or its SAG) first satisfies the section 368(c) control requirement, the acquiring corporation (or its SAG) must possess section 368(c) control without relying on any stock acquired in a transaction in which gain or loss was recognized during the pre-distribution period.

For example, assume that C has two classes of stock outstanding. X owns all 95 shares of the class A stock of C representing 95 percent of the voting power and 70 percent of the value and Y owns all of the class B stock of C representing five percent of the voting power and 30 percent of the value. In year 1, unrelated D acquires 10 shares of the class A C stock from X in a transaction in which gain or loss is recognized. In year 2, D acquires an additional 80 shares of class A C stock from X in a separate transaction in which no gain or loss is recognized. In year 3, D acquires the remaining five shares of class A C stock from X in a separate transaction in which gain or loss is recognized. In year 4, D distributes the 95 shares of class A C stock to the D shareholders. Assuming all of the other requirements of section 355(b) are satisfied, the requirements of section 355(b)(2)(D)(ii) are satisfied because at the time D first acquired control of C (immediately after the year 2 acquisition), D owned an amount of C stock constituting control that was acquired in a transaction in which no gain or loss was recognized (the 80 shares of class A C stock acquired in year 2). (However, the 10 shares of class A C stock acquired in year 1 and the five shares of class A C stock acquired in year 3 may be treated as moot under section 355(a)(3)(B).)

On the other hand, assume the same facts as the previous example, except that, in year 2, D acquires only 75 shares of class A C stock from X. The requirements of section 355(b)(2)(D)(ii) are not satisfied because at the time D first acquired control of C (immediately after the year 2 acquisition), D did not own an amount of C stock constituting control that was acquired in one or more transactions in which no gain or loss was recognized or acquired prior to the pre-distribution period. D only owns C voting stock representing 75 percent of the total voting power that was acquired in a transaction in which no gain or loss was recognized. The result would be the same if the year 3 acquisition was also a transaction in which no gain or loss was recognized.

b. Indirect Acquisitions

These proposed regulations also provide that the principles of this rule will be applied with respect to an indirect acquisition of distributing or controlled stock. For example, assume T corporation owns stock of C (an unaffiliated subsidiary) constituting control (and no more). Unrelated D acquires 10 percent of the sole outstanding class of stock of T in a transaction in which gain or loss is recognized. In a separate transaction, T merges into D solely in exchange for D stock in a transaction in which no gain or loss is recognized. In applying this multi-step acquisition rule to D's subsequent acquisition of control of C in the merger, the prior acquisition of T stock in the transaction in which gain or loss was recognized is treated as an acquisition of 10 percent of the C stock owned by T (representing 8 percent of the total combined voting power of the C stock) in a transaction in which gain or loss is recognized. Accordingly, the requirements of section 355(b)(2)(D)(ii) are not satisfied because at the time D first acquires control of C, D does not own an amount of C stock constituting

control that was acquired in one or more transactions in which no gain or loss is recognized or acquired prior to the pre-distribution period. At that time, D had only acquired C stock representing 72 percent of the total combined voting power of the C stock in a transaction in which no gain or loss is recognized.

2. Other Multiple-Step Acquisitions

As discussed in sections A.1., B.1., and B.3. of this preamble, if D acquires section 1504(a)(2) stock of a corporation, the acquired corporation will become a DSAG member and the corporation will be treated like a division of D for purposes of the active trade or business requirement. As such, D is treated as if it acquired the assets and activities of the new subsidiary SAG member, and the acquisition must satisfy the requirements of section 355(b)(2)(C) rather than section 355(b)(2)(D). If D subsequently acquires the remaining stock of the corporation in a separate transaction, such acquisition is disregarded for purposes of satisfying the active trade or business requirement (regardless of whether gain or loss was recognized in the separate transaction) because the subsidiary is already treated as a division of D for this purpose. The IRS and Treasury Department believe that the order of these acquisitions should not be determinative in applying section 355(b)(2)(C), provided that at the time the corporation first becomes a subsidiary SAG member, the SAG owns section 1504(a)(2) stock in the corporation without relying on any stock acquired in a transaction in which gain or loss was recognized during the pre-distribution period.

a. Direct SAG Acquisitions

Consistent with the treatment of multi-step acquisitions of control of a corporation discussed in section D.1. of this preamble, these proposed regulations provide that multi-step acquisitions of stock resulting in a corporation becoming a subsidiary SAG member will satisfy the requirements of section 355(b)(2)(C), provided that at the time the corporation first becomes a subsidiary SAG member, the SAG owns section 1504(a)(2) stock in the corporation without relying on any stock acquired in a transaction in which gain or loss was recognized during the pre-distribution period.

For example, assume that in year 1, D does not conduct an active trade or business and has owned control of C for more than five years. C and T, an unrelated corporation, have each engaged in the active conduct of a trade or business for more than five years. In year 1, D acquires 10 percent of T's sole outstanding class of stock in a transaction in which gain or loss was recognized. In year 2, D acquires an additional 80 percent of T's stock in a separate transaction in which no gain or loss was recognized. T becomes a DSAG member as a result of the year 2 stock acquisition. In year 3, D distributes the C stock to the D shareholders. Assuming all of the other requirements of section 355(b) are satisfied, the requirements of section 355(b)(2)(C) are satisfied because at the time T first became a DSAG member (immediately after the year 2 acquisition), D owned an amount of T stock meeting the requirements of section 1504(a)(2) that was acquired in a transaction in which no gain or loss was recognized (the T stock acquired in year 2).

On the other hand, assume the same facts as the previous example except that, in year 2, D only acquires an additional 75 percent of T's stock. The requirements of section 355(b)(2)(C) are not satisfied because at the time T first became a DSAG member (immediately after the year 2 acquisition), D did not own an amount of T stock meeting the requirements of section 1504(a)(2) that was acquired in one or more transactions in which no gain or loss was recognized or acquired prior to the pre-distribution period. D owns only 75 percent of T's stock that was acquired in a transaction in which no gain or loss was recognized. The result would be the same even if, in year 3 prior to the distribution of the C stock, D acquired the remaining 15 percent of the T stock in a transaction in which no gain or loss is recognized.

b. Indirect SAG Acquisitions

Similar to the rule regarding multi-step acquisitions of control of distributing or controlled, these proposed regulations also provide that the principles of this rule will be applied with respect to an indirect acquisition by the SAG of stock of a corporation that becomes a SAG member. For example, assume a DSAG member acquires 25 percent of the sole outstanding class of stock of T, a corporation that wholly owns S, in a transaction in which gain or loss is recognized. In a separate transaction, another DSAG member acquires all of the stock of S from T solely in exchange for D voting stock in a reorganization described in section 368(a)(1)(B) in which no gain or loss is recognized. As a result, S becomes a DSAG member. In applying this multi-step acquisition rule to the DSAG's subsequent acquisition of S stock, the acquisition of 25 percent of the T stock in the transaction in which gain or loss was recognized will be treated as an acquisition of 25 percent of the S stock in a transaction in which gain or loss is recognized. Accordingly, the requirements of section 355(b)(2)(C) are not satisfied because at the time S first becomes a DSAG member, the DSAG does not own section 1504(a)(2) stock of S that was acquired in one or more transactions in which no gain or loss is recognized or acquired prior to the pre-distribution period.

c. Multi-Step Asset Acquisitions

Because stock acquisitions that result in a corporation becoming a subsidiary SAG member are treated as direct acquisitions of the target corporation's assets for purposes of applying section 355(b), these proposed regulations apply a comparable multi-step acquisition rule to acquisitions of stock in non-SAG members where such non-members' assets are subsequently directly acquired by a SAG member. Specifically, these proposed regulations provide that if immediately before a SAG's direct acquisition of a trade or business (or an interest in a partnership engaged in a trade or business) held by a corporation (owner) in a transaction to which section 381 applies and in which no gain or loss is recognized, the SAG owns an amount of stock of the owner that it acquired in one or more transactions during the pre-distribution period in which gain or loss was recognized such that all of the other stock of the owner does not meet the requirements of section 1504(a)(2), such direct acquisition shall be treated as a transaction in which gain or loss was recognized. Thus, these proposed regulations apply section 355(b)(2)(C) to multi-step acquisitions in the same manner regardless of whether the separate steps result in the target corporation becoming a subsidiary SAG member or result in a direct acquisition of the target corporation's assets.

For example, assume that in year 1, D does not conduct an active trade or business, and has owned control of C for more than five years. C and T, an unrelated corporation, have each engaged in the active conduct of a trade or business for more than five years. In year 1, D acquires 10 percent of T's sole outstanding class of stock in a transaction in which gain or loss was recognized. In year 2, in a separate reorganization described in section 368(a)(1)(A), T merges into D and the T shareholders receive solely D stock in exchange for their T stock. No gain or loss is recognized in the merger. In year 3, D distributes the stock of C to the D shareholders. Assuming all of the other requirements of section 355(b) are satisfied, the requirements of section

355(b)(2)(C) are satisfied because, at the time D acquires T's active trade or business, D did not own an amount of T stock that was acquired in one or more transactions during the pre-distribution period in which gain or loss was recognized such that all of the other T stock does not meet the requirements of section 1504(a)(2).

On the other hand, assume the same facts as the previous example except that in year 1 D acquires 21 percent of T's stock. The requirements of section 355(b)(2)(C) are not satisfied because, at the time D acquires T's active trade or business, D owned an amount of T stock that was acquired in one or more transactions during the pre-distribution period in which gain or loss was recognized such that all of the other T stock does not meet the requirements of section 1504(a)(2).

These proposed regulations also provide that the principles of this rule will be applied with respect to an indirect acquisition of the target corporation's stock by the SAG.

E. Expansion Acquisitions

The legislative history, the courts, and the current regulations acknowledge that a trade or business can undergo many changes during the pre-distribution period and still satisfy the requirements of section 355(b). See H.R. No. 83–2543, at 37, 38 (1954) (Conf. Rep.); *Estate of Lockwood* v. *Commissioner*, 350 F.2d 712 (8th Cir. 1965); and § 1.355–3(b)(3)(ii). Furthermore, § 1.355–3(b)(3)(ii) provides ''if a corporation engaged in the active conduct of one trade or business during that five-year period purchased, created, or otherwise acquired another trade or business in the same line of business, then the acquisition of that other business is ordinarily treated as an expansion of the original business, all of which is treated as having been actively conducted during that five-year period, unless that purchase, creation, or other acquisition effects a change of such a character as to constitute the acquisition of a new or different business.'' Therefore, an acquired trade or business that is an expansion of the original trade or business inherits the business history of the expanded business.

None of these authorities, however, addresses whether an existing trade or business can be expanded by acquiring the stock of a corporation engaged in a trade or business in the same line of business as the acquiror. Because the SAG rule causes a stock acquisition in which the acquired corporation becomes a subsidiary SAG member to be treated as an asset acquisition, a corporation engaged in a trade or business should be able to expand its existing trade or business by acquiring stock of a corporation (including controlled) engaged in a trade or business in the same line of business provided the acquisition results in the acquired corporation becoming a subsidiary SAG member.

On the other hand, section 355(b)(3) does not allow a corporation to rely on the trade or business of a non-SAG subsidiary—even if the corporation controls the subsidiary—to satisfy the active trade or business requirement. As such, it effectively precludes stock expansions where the acquired corporation does not become a subsidiary SAG member. The IRS and Treasury Department believe that section 355(b)(3) is the exclusive means by which a corporation is attributed the assets (or activities) owned (or conducted) by another corporation. Accordingly, a stock acquisition that does not result in the acquired corporation becoming a subsidiary SAG member should not be an expansion of the SAG's original business.

In addition, these proposed regulations provide certain facts and circumstances to be considered in determining whether one trade or business is in the same line of business as another trade or business. The inclusion of these facts and circumstances in these proposed regulations is not intended to be a substantive change, but merely to clarify and restate the current law regarding expansions. See Rev. Rul. 2003–18 (2003–1 CB 467) and Rev. Rul. 2003–38 (2003–1 CB 811). Some of the examples from the current regulations have been altered in these proposed regulations to reflect this inclusion (as well as certain stylistic changes).

F. Rules Related to Hot Stock

Section 355(a)(3)(B) provides that stock of controlled acquired by distributing during the pre-distribution period in a transaction in which gain or loss is recognized is treated as boot. Section 1.355–2(g) provides guidance regarding the application of section 355(a)(3)(B). The IRS and Treasury Department request comments regarding whether § 1.355–2(g) should be amended to adopt rules under section 355(a)(3)(B) similar to those provided in these proposed regulations for determining whether an acquisition is one in which gain or loss is recognized for purposes of section 355(b)(2)(C) or (D).

In particular, the IRS and Treasury Department request comments concerning the application of section 355(a)(3)(B) to acquisitions of stock of controlled in gain or loss transactions that, under these proposed regulations, are not treated as violating the requirements of section 355(b). For example, where distributing acquires stock of controlled in a gain or loss transaction that is treated as an expansion of distributing's existing trade or business (because controlled is in distributing's line of business and becomes a DSAG member), what portion, if any, of the acquired stock should be subject to section 355(a)(3)(B)?

The current authorities may suggest a linkage between the interpretation of sections 355(a)(3)(B) and 355(b). See § 1.355–2(g)(1) (not applying section 355(a)(3)(B) to a taxable acquisition from an affiliate); Rev. Rul. 78–442 (stating ''[l]ikewise, for the same reasons [that section 355(b)(2)(C) does not apply], section 355(a)(3)[(B)] of the Code is not applicable''). However, section 355(b)(3) by its literal terms does not appear to apply for purposes section 355(a)(3)(B).

The IRS and Treasury Department continue to study how to coordinate the application of these provisions and request comments in this regard. Accordingly, these proposed regulations contain no proposal to change § 1.355–2(g) at this time.

G. Limited Affiliate Exception

Other than with respect to transfers of assets (or activities) that are owned (or performed) by the SAG immediately before and immediately after the transfer, these proposed regulations do not include the special treatment accorded affiliated group members in § 1.355–3(b)(4)(iii). Thus, these proposed regulations treat non-SAG member affiliates of distributing or controlled in the same manner as unrelated persons for purposes of applying section 355(b)(2)(C) and (D). While distributing is the common parent of its SAG, distributing may be a subsidiary member of a larger affiliated group. Therefore, not all members of distributing's affiliated group are DSAG members.

Section 1.355–3(b)(4)(iii) provides that acquisitions by one member of an affiliated group from another member of the group are disregarded in applying section 355(b)(2)(C) and (D), even if gain or loss is recognized. Section 1.355–3(b)(4)(iii) provides for this treatment for affiliates because although ''[t]he requirements of section 355(b)(2)(C) and (D) are intended to prevent the direct or indirect acquisition of a trade or business by a corporation in anticipation of a distribution by the

corporation of that trade or business in a distribution to which section 355 would otherwise apply[,]'' acquisitions from affiliates are not the type of transaction to which these provisions were intended to apply. Section 1.355–3(b)(4)(iv) defines the term ''affiliated group'' as an affiliated group as defined in section 1504(a) (without regard to section 1504(b)), except that the term ''stock'' includes nonvoting stock described in section 1504(a)(4).

The IRS and Treasury Department believe that limiting this special treatment to transfers in which the assets (or activities) remain in the SAG (as opposed to the larger affiliated group) is more consistent with the purposes of section 355(b)(3). As discussed in section A.1. of this preamble, section 355(b)(3) states, in effect, that in determining whether distributing or controlled is engaged in a trade or business all DSAG or CSAG members, as the case may be, are treated as one corporation. Therefore, a transfer of trade or business assets (or activities) from one SAG member to another SAG member is disregarded, and is not an acquisition for purposes of section 355(b)(2)(C) (or section 355(b)(2)(D) in the case of stock of controlled that is not a DSAG member). The SAG rule implies a corollary, which is that if the trade or business assets (or activities) are not owned (or performed) by the SAG, such assets (or activities) should generally not be able to be acquired from outside the SAG in a transaction in which gain or loss is recognized. Thus, these proposed regulations generally do not permit taxable acquisitions of an active trade or business from outside the SAG.

The IRS and Treasury Department recognize that not providing this special treatment for non-SAG member affiliates is a change from how the law has been administered in various situations. Further, the IRS and Treasury Department recognize that this change can represent a relaxing or tightening of the law in this area, depending upon the circumstances. For example, under these proposed regulations the requirements of section 355(b)(2)(C) are satisfied where P, a higher-tier affiliate of distributing, purchases a trade or business for cash and contributes it to distributing solely in exchange for distributing stock in a transaction in which no gain or loss is recognized. On the other hand, under these proposed regulations, the requirements of section 355(b)(2)(C) are not satisfied where P has actively conducted a trade or business for more than five years and sells it to D in exchange for cash.

H. Activities Performed by Certain Related Parties

Current § 1.355–3(b)(2)(iii) provides, in part, that to satisfy the active trade or business requirement, the corporation itself generally is required to perform active and substantial management and operational functions. That regulation further provides that activities performed by the corporation itself generally do not include activities performed by independent contractors. In this regard, ''a corporation must engage in entrepreneurial endeavors of such a nature and to such an extent as to qualitatively distinguish its operations from mere investments [, and] * * * there should be objective indicia of such corporate operations.'' *Rafferty* v. *Commissioner*, 452 F.2d 767, 772 (1st Cir. 1971) *cert. denied* 408 U.S. 922 (1972) (concluding that a corporation that did not pay salaries or rent, did not employ independent contractors, and merely collected rent, paid taxes, and kept separate books, failed to satisfy these requirements). The IRS and Treasury Department believe that a corporation may rely on the activities performed by certain related parties in conducting its ''entrepreneurial endeavors,'' and such activities can constitute ''objective indicia'' of corporate operations.

While section 355(b)(3) treats all SAG members as one corporation, the IRS and Treasury Department are aware that affiliated groups of corporations that include non-SAG member affiliates might use employees of one member of the group to perform management or operational functions for another member of the group. The IRS and the Treasury Department believe that a corporation can satisfy the active trade or business requirement even if all the management and operational functions are performed by employees of affiliates that are not members of either the DSAG or CSAG. In other words, the DSAG or CSAG can be engaged in ''entrepreneurial endeavors'' that are distinguishable from mere passive investment even if the management and operational functions are performed for the DSAG or CSAG by employees of non-SAG affiliates. Such individuals bear a close enough relationship to the DSAG or CSAG to be distinguished from mere independent contractors for purposes of the active trade or business requirement. The IRS and Treasury Department believe that this treatment is appropriate and consistent with previously published guidance.

Issued prior to the enactment of section 355(b)(3), Rev. Rul. 79–394 (1979–2 CB 141), amplified by Rev. Rul. 80–181 (1980–2 CB 121), concludes that controlled satisfies the active trade or business requirement even though all of the operational activities of its business are conducted by an affiliate's employees before the distribution. The IRS and Treasury Department believe that extending the principles of Rev. Rul. 79–394 and Rev. Rul. 80–181 to the performance of management (in addition to operational) functions by employees of an affiliate is consistent with the purposes underlying the active trade or business requirement. Accordingly, these proposed regulations provide that, in determining whether a corporation is engaged in the active conduct of a trade or business, activities (including management and operational functions) performed by employees of the corporation's affiliates (including non-SAG members) are taken into account.

Furthermore, the IRS and Treasury Department believe that a corporation can satisfy the active trade or business requirement even if all the management and operational functions are performed by shareholders of the corporation if it is closely held. The shareholders of closely held corporations possess a close relationship with the corporation, similar to employees of affiliates. Accordingly, these proposed regulations provide that, in determining whether a corporation is engaged in the active conduct of a trade or business, activities (including management and operational functions) performed by shareholders of a closely held corporation are taken into account in certain cases.

The IRS and Treasury Department do not believe that the absence of an exception for acquisitions from non-SAG member affiliates is inconsistent with concluding that a corporation can satisfy the active trade or business requirement by relying on the management and operational functions performed by employees of non-SAG member affiliates. Relying on the activities of such employees does not involve the acquisition of a trade or business. As such, it is not the type of transaction or arrangement section 355(b)(2) was intended to address. Accordingly, the IRS and Treasury Department believe it is appropriate to apply a broader standard with respect to relying on employees of non-SAG member affiliates.

While it is appropriate to consider the management and operational activities of employees of all affiliates in determining whether a corporation satisfies the active trade or business requirement, the IRS and Treasury Department believe that a corporation should satisfy the active trade or

business requirement only if it (or another SAG member, or a partnership from which the trade or business assets and activities are attributed) is the principal owner of the goodwill and significant assets of the trade or business for Federal income tax purposes. Accordingly, a corporation will be treated as engaged in the active conduct of a trade or business only if, for Federal income tax purposes, it (or its SAG member, or a partnership from which the trade or business assets and activities are attributed) is the principal owner of the goodwill and significant assets of the trade or business. Accordingly, some of the examples from the current regulations have been altered in these proposed regulations to reflect this goodwill and significant asset standard (as well as certain stylistic changes).

I. Activities Conducted by a Partnership

Revenue Ruling 92–17 (1992–1 CB 142) and Rev. Rul. 2002–49 (2002–2 CB 288) address in a number of fact situations whether a corporation that is a partner in a partnership can satisfy the active trade or business requirement by reason of its ownership of the partnership interest where the partnership conducts a trade or business. Those rulings illustrate that a corporation owning a 20-percent interest in a state law partnership or limited liability company (LLC) that is classified as a partnership for Federal income tax purposes can be treated as engaged in the active conduct of the trade or business of the partnership if the corporation performs active and substantial management functions for the partnership's business. In addition, Rev. Rul. 2002–49 concludes that such a corporation can be treated as engaged in the active conduct of a partnership's trade or business, even if another partner also performs active and substantial management functions for the partnership's trade or business.

Consistent with the principles set forth in Rev. Rul. 92–17 and Rev. Rul. 2002–49 regarding satisfying the active trade or business requirement through an interest in a partnership, these proposed regulations provide that for purposes of section 355(b) a partner will be attributed the trade or business assets and activities of a partnership if the partner (1) Performs active and substantial management functions for the partnership with respect to the trade or business assets or activities (for example, makes decisions regarding significant business issues of the partnership and regularly participates in the overall supervision, direction, and control of the employees performing the operational functions for the partnership), and (2) owns a meaningful interest in the partnership. Further, because a partnership might only conduct a portion of a trade or business, the IRS and Treasury Department believe that a partner that satisfies these requirements can be attributed the portions of a trade or business (or assets and activities) that are conducted by a partnership. Under these circumstances the IRS and Treasury Department believe that it is appropriate to aggregate the partnership's trade or business assets and activities with those of the partner for purposes of determining whether the partner satisfies the active trade or business requirement. However, the stock of a corporation held by the partnership is not attributed to a partner.

The IRS and Treasury Department understand that the facts presented in Rev. Rul. 92–17 and Rev. Rul. 2002–49 do not necessarily reflect the exclusive methods by which corporations engage in a trade or business through a partnership. In particular, the IRS and Treasury Department understand that both the management and operational activities of an LLC are often conducted by the LLC itself, rather than by its members, to protect its members from liability for the LLC's activities. In these cases, Rev. Rul. 92–17 and Rev. Rul. 2002–49 do not explicitly support the conclusion that a corporation may rely on the trade or business assets and activities of an LLC to satisfy the active trade or business requirement, since no activities are performed by the corporate partner.

The IRS and Treasury Department believe that, in certain cases, a partner that owns a significant interest in an entity that is treated as a partnership for Federal income tax purposes should be attributed the trade or business assets and activities of a partnership, even if the partner does not directly conduct any activities relating to the business of the partnership. By comparison, the IRS and Treasury Department have promulgated regulations regarding the treatment of acquired assets held by a partnership for purposes of satisfying the continuity of business enterprise requirement applicable to reorganizations. Those regulations provide that a partner will be treated as owning the acquired target business assets used in the business of a partnership in satisfaction of the continuity of business enterprise requirement if the members of the qualified group, in the aggregate, own an interest in the partnership representing a significant interest in that partnership business. See § 1.368–1(d)(4)(iii)(B)(*1*). Those regulations include an example concluding that the continuity of business enterprise requirement is satisfied where a partner owns a one-third interest in a partnership that continues the business of the target corporation, even though the partner performs no management or operational functions for that business. See § 1.368–1(d)(5) *Example 9.*

These proposed regulations yield results similar to the continuity of business enterprise rule in determining whether the active trade or business requirement is satisfied when a corporation conducts a trade or business or portions of a trade or business through a partnership but does not participate in the partnership's activities. Specifically, these proposed regulations provide that for purposes of section 355(b) a partner will be attributed the trade or business assets and activities of a partnership provided the partner owns a significant interest in the partnership. The IRS and Treasury Department intend that the term ''significant interest'' requires an ownership interest that is greater than that suggested by the term ''meaningful interest,'' which is the level of ownership required for a partner to be attributed the trade or business assets and activities of a partnership in cases where the partner performs active and substantial management functions for the partnership.

However, a partner will be attributed the trade or business assets and activities of a partnership only during the period it owns a significant interest or alternatively owns a meaningful interest and performs active and substantial management functions.

J. Additional Requests for Comments

The IRS and Treasury Department request comments regarding whether the regulations should include a rule that would treat an acquisition in which no gain or loss is recognized as an acquisition in which gain or loss is recognized if that would be the treatment had the transaction been executed in the opposite direction. For example, assume that, in year 1, P, a corporation not engaged in an active trade or business, acquires 50 percent of all of the outstanding stock of D (which is engaged in an active trade or business, and owns control of C, which is also engaged in an active trade or business) in a transaction in which gain or loss is recognized, and then, in a separate transaction in year 3, D merges into P solely in exchange for P stock in a transaction described in section 368(a)(1)(A) in which no gain or loss is recognized. P then distributes the C

stock to its shareholders in year 4. Under these proposed regulations, P is treated as having acquired D's trade or business and control of C during the pre-distribution period in a transaction in which gain or loss is recognized because P acquired more than 20 percent of D's stock during the pre-distribution period in a transaction in which gain or loss was recognized (see sections D.1.b. and D.2.c of this preamble). However, if P merges downstream into D solely in exchange for D stock in a reorganization described in section 368(a)(1)(A) and (D) in which no gain or loss is recognized, there literally is not an acquisition in which gain or loss is recognized under these proposed regulations, because D did not acquire any interest in an active trade or business from P. Comments are requested regarding whether the result should differ depending upon the direction of the merger. See and compare § 1.355–3(b)(4)(ii) (predecessor of distributing acquiring control of distributing).

Further, the IRS and Treasury Department request comments regarding the appropriate methods of measuring indirect acquisitions of stock for purposes of the rules regarding multi-step acquisitions, as discussed in section D. of this preamble. Specifically, comments are requested regarding how the indirect acquisition should be measured where the acquired corporation has multiple classes of stock outstanding, or where the acquired entity is a partnership. For example, assume T is a corporation that owns all of the stock of a subsidiary, S, and T has class A common stock, class B common stock, and preferred stock outstanding. If D acquires 10 percent of the T class A common stock, how should one determine what percentage of S stock D has indirectly acquired? Should it be based on the value of the T stock D acquired relative to the value of all of the T stock or other factors? How should the voting power of the acquired T stock be taken into account in applying these rules to potential indirect acquisitions of control?

In addition, the IRS and Treasury Department request comments regarding whether the parameters of the good faith and inadvertence exceptions in Notice 2004–37 (2004–1 CB 947) regarding the value requirement in section 1504(a)(2)(B) should apply for purposes of determining whether corporations are SAG members even if they are not members of a consolidated group. That is, the IRS and Treasury Department request comments regarding whether the policies underlying the SAG rule and the reference to section 1504(a) in section 355(b)(3)(B) suggest that the good faith and inadvertence exceptions should apply and be interpreted in the same way for SAG membership as for affiliation for purposes of filing consolidated returns.

The IRS and Treasury Department also request comments regarding whether the regulations should clarify the circumstances under which the separation of a segment of an active trade or business should be treated as a separate active trade or business after it is spun off and, if so, what the governing principle should be. See, for example, § 1.355–3(c) *Example (9)* (separation of a corporation's research department from the rest of its manufacturing business).

Although these regulations are generally proposed to be applicable to distributions that occur after the date these regulations are published as final regulations in the **Federal Register**, the IRS and Treasury Department invite comments regarding whether it would be appropriate and desirable to allow taxpayers to elect to apply these provisions retroactively (subject to the applicability of section 355(b)(3)).

Proposed Effective Date

These proposed regulations are proposed to apply to distributions that occur after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

Availability of IRS Documents

IRS revenue rulings, procedures, and notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.355–0 is amended by revising the entries under § 1.355–3.

The revisions are as follows:

§ 1.355–0 Outline of sections.

* * * * *

§ 1.355–3 Active conduct of a trade or business.

(a) General requirements.
(b) Active conduct of a trade or business defined.
(1) In general.
(i) Directly engaged in a trade or business.
(ii) Treatment of a separate affiliated group.
(iii) Separate affiliated group defined.
(2) Active conduct of a trade or business immediately after the distribution.
(i) In general.
(ii) Trade or business.
(iii) Active conduct.
(iv) Limitations.
(v) Partner attributed the trade or business assets and activities of a partnership.
(A) In general.
(B) Significant interest.
(C) Meaningful interest.
(D) Other factors.
(3) Active conduct for the pre-distribution period.
(i) In general.
(ii) Change and expansion.

(iii) Certain transactions with partnerships that do not constitute acquisitions.
(4) Special rules for an acquisition of a trade or business.
(i) In general.
(A) Application of section 355(b)(2)(C).
(B) Application of section 355(b)(2)(D).
(C) Gain or loss recognized.
(ii) Certain transactions treated as transactions in which gain or loss is recognized.
(A) Certain tax-free acquisitions made in exchange for assets.
(B) Distributions from partnerships.
(iii) Certain transactions in which recognized gain or loss is disregarded.
(A) Transfers to controlled.
(B) Cash for fractional shares.
(C) Certain acquisitions of control of distributing.
(iv) Operating rules for acquisitions.
(A) Predecessors.
(B) Certain multi-step acquisitions of control of distributing or controlled.
(C) Certain multi-step acquisitions of a subsidiary SAG member.
(D) Certain multi-step asset acquisitions.
(E) Acquisitions involving the issuance of subsidiary stock.
(F) Acquisitions of controlled stock where controlled is or becomes a DSAG member.
(G) Treatment of stock received in certain tax-free exchanges.
(H) Situations where the separate existence of a subsidiary SAG member is respected.
(c) Definitions.
(1) Affiliate.
(2) Controlled.
(3) Distributing.
(4) Pre-distribution period.
(d) Conventions and examples.
(1) Conventions.
(2) Examples.

* * * * *

Par. 3. Section 1.355–1 is amended by revising paragraph (a) to read as follows:

§ 1.355–1 Distribution of stock and securities of a controlled corporation.

(a) *Effective date of certain sections.* Except as otherwise provided, §§ 1.355–1, 1.355–2, and 1.355–4 apply to transactions occurring after February 6, 1989. Section 1.355–3 applies to distributions after the date these regulations are published as final regulations in the **Federal Register**. For transactions occurring on or before that date but after February 6, 1989, see 26 CFR 1.355–3 (revised as of April 1, 2007). For all transactions occurring on or before February 6, 1989, see 26 CFR 1.355–1 through 1.355–4 (revised as of April 1, 1987). Sections 1.355–1, 1.355–2, and 1.355–4 do not reflect the amendments to section 355 made by the Revenue Act of 1987 and the Technical and Miscellaneous Revenue Act of 1988. For the effective date of §§ 1.355–6 and 1.355–7, see §§ 1.355–6(g) and 1.355–7(k), respectively.

* * * * *

Par. 4. Section 1.355–3 is revised to read as follows:

§ 1.355–3 Active conduct of a trade or business.

(a) *General requirements.* Under section 355(b)(1), a distribution of stock, or stock and securities, of controlled (as defined in paragraph (c)(2) of this section) qualifies under section 355 only if—

(1) Distributing (as defined in paragraph (c)(3) of this section) and controlled are each engaged in the active conduct of a trade or business immediately after the distribution (section 355(b)(1)(A)); or

(2) Immediately before the distribution, distributing had no assets other than stock or securities of the controlled corporations (without regard to paragraph (b)(1)(ii) of this section), and each of the controlled corporations is engaged in the active conduct of a trade or business immediately after the distribution (section 355(b)(1)(B)). A *de minimis* amount of assets held by distributing shall be disregarded for purposes of this paragraph (a)(2).

(b) *Active conduct of a trade or business defined*—(1) *In general*—(i) *Directly engaged in a trade or business.* Section 355(b)(2) provides rules for determining whether a corporation is treated as engaged in the active conduct of a trade or business under section 355(b)(1). Sections 355(b)(2)(A) and (b)(3)(A) provide that a corporation is treated as engaged in the active conduct of a trade or business if and only if such corporation is engaged in the active conduct of a trade or business. Accordingly, except as provided in paragraph (b)(1)(ii) of this section, a corporation is not treated as engaged in the active conduct of a trade or business under such Internal Revenue Code sections solely as a result of substantially all of its assets consisting of stock, or stock and securities, of one or more corporations controlled by it (immediately after the distribution) each of which is engaged in the active conduct of a trade or business.

(ii) *Treatment of a separate affiliated group.* Under section 355(b)(3)(B), solely for purposes of determining whether a corporation is engaged in the active conduct of a trade or business, all members of a corporation's separate affiliated group (SAG) (as defined in paragraph (b)(1)(iii) of this section) shall be treated as one corporation. This treatment applies for all purposes of determining whether a corporation is engaged in the active conduct of a trade or business. Accordingly, for this purpose, transfers of assets (or activities) that are owned (or performed) by the SAG immediately before and immediately after the transfer are disregarded and are not acquisitions under paragraph (b)(4) of this section. Further, a transaction that results in a corporation becoming a subsidiary SAG member (a SAG member that is not the common parent of such SAG) is treated as an acquisition of any assets (or activities) that are owned (or performed) by the acquired corporation at such time. Therefore, the acquisition of additional stock of a current subsidiary SAG member has no effect for purposes of applying paragraph (b)(4)(i)(A) of this section.

(iii) *Separate affiliated group defined.* A corporation's SAG is the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply. Thus, the separate affiliated group of distributing (DSAG) is the affiliated group that consists of distributing as the common parent and all corporations affiliated with distributing through stock ownership described in section 1504(a)(1)(B) (regardless of whether the corporations are includible corporations under section 1504(b)). The separate affiliated group of controlled (CSAG) is determined in a similar manner (with controlled as the common parent). Accordingly, prior to a distribution, the DSAG may include CSAG members if the applicable ownership requirements are met. Further, the determination of whether a corporation is a DSAG or CSAG member shall be made separately for each distribution, and without regard to whether such corporation is a SAG member with respect to any other distribution. Any reference to DSAG or CSAG is a reference to distributing or controlled, respectively, if such corporation is not the common parent of a SAG (that is, such corporation does not own stock in any corporation that is a subsidiary member of its SAG). Further, any reference to a SAG is a reference to distributing or controlled, as the context may require, if such corporation is not the common parent of a SAG.

(2) *Active conduct of a trade or business immediately after the distribution*—(i) *In general.* For purposes of section 355(b), a corporation shall be treated as engaged in the active conduct of a trade or business immediately after the distribution if the assets and activities of the corporation satisfy the requirements and limitations described in paragraphs (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) of this section. See paragraph (b)(2)(v) of this section for additional special rules that apply to determine whether a

corporation is attributed the trade or business assets and activities of a partnership.

(ii) *Trade or business.* A corporation shall be treated as engaged in a trade or business immediately after the distribution if a specific group of activities is being carried on by the corporation for the purpose of earning income or profit, and the activities included in such group include every operation that forms a part of, or a step in, the process of earning income or profit. Such group of activities ordinarily must include the collection of income and the payment of expenses.

(iii) *Active conduct.* For purposes of section 355(b), the determination of whether a trade or business is actively conducted will be made from all of the facts and circumstances. Generally, the corporation is required itself to perform active and substantial management and operational functions. Activities performed by a corporation include activities performed by employees of an affiliate (as defined in paragraph (c)(1) of this section), and in certain cases by shareholders of a closely held corporation, if such activities are performed for the corporation. For example, activities performed by a corporation include activities performed for the corporation by its sole shareholder. However, the activities of employees of affiliates (or, in certain cases, shareholders) are only taken into account during the period such corporations are affiliates (or persons are shareholders) of the corporation. A corporation will not be treated as engaged in the active conduct of a trade or business unless it (or its SAG, or a partnership from which the trade or business assets and activities are attributed) is the principal owner of the goodwill and significant assets of the trade or business for Federal income tax purposes. Activities performed by a corporation generally do not include activities performed by persons outside the corporation, including independent contractors, unless those activities are performed by employees of an affiliate (or, in certain cases, by shareholders). However, a corporation may satisfy the requirements of this paragraph (b)(2)(iii) through the activities that it performs itself, even though some of its activities are performed by persons that are not its employees, or employees of an affiliate (or, in certain cases, shareholders). Separations of real property all or substantially all of which is occupied before the distribution by the DSAG or CSAG will be carefully scrutinized in applying the requirements of section 355(b) and this section.

(iv) *Limitations.* The active conduct of a trade or business does not include—

(A) The holding for investment purposes of stock, securities, land, or other property; or

(B) The ownership and operation (including leasing) of real or personal property used in a trade or business, unless the owner performs significant services with respect to the operation and management of the property.

(v) *Partner attributed the trade or business assets and activities of a partnership*—(A) *In general.* For purposes of section 355(b), a partner in a partnership will be attributed the trade or business assets and activities of that partnership during the period that such partner satisfies the requirements of paragraph (b)(2)(v)(B) or (b)(2)(v)(C) of this section. However, for purposes of this paragraph (b)(2)(v), the stock of a corporation owned by the partnership is not attributed to a partner. For purposes of determining the activities that are conducted by the partnership that may be attributed to the partner under this paragraph (b)(2)(v), the activities of independent contractors, and partners that are not affiliates (or, in certain cases, shareholders) of the partner, are not taken into account. For this purpose, the activities of partners that are affiliates (or, in certain cases, shareholders) of the partner are only taken into account during the period that such partners are affiliates (or, in certain cases, shareholders) of the partner.

(B) *Significant interest.* The trade or business assets and activities of a partnership will be attributed to a partner if the partner (or its SAG) directly (or indirectly through one or more other partnerships) owns a significant interest in the partnership.

(C) *Meaningful interest.* The trade or business assets and activities of a partnership will be attributed to a partner if the partner or affiliates (or, in certain cases, shareholders) of the partner performs active and substantial management functions for the partnership with respect to the trade or business assets and activities (for example, makes decisions regarding significant business issues of the partnership and regularly participates in the overall supervision, direction, and control of the employees performing the operational functions for the partnership), and the partner (or its SAG) directly (or indirectly through one or more other partnerships) owns a meaningful interest in the partnership. Whether such active and substantial management functions are performed with respect to the trade or business assets and activities of the partnership will be determined from all of the facts and circumstances. The number of partners providing management functions will not be determinative.

(D) *Other factors.* In deciding whether the requirements of paragraph (b)(2)(v)(B) or (b)(2)(v)(C) of this section are satisfied, the formal description of the partnership interest (for example, general or limited) will not be determinative and the extent to which the partner is responsible for liabilities of the partnership will not be relevant.

(3) *Active conduct for the pre-distribution period*—(i) *In general.* Under section 355(b)(2), a trade or business that is relied upon to meet the requirements of section 355(b) must have been actively conducted throughout the pre-distribution period (as defined in paragraph (c)(4) of this section) by the DSAG or CSAG, or actively conducted throughout the pre-distribution period and acquired during such period by the DSAG or CSAG in a transaction in which no gain or loss is recognized as provided in paragraph (b)(4) of this section. For purposes of section 355(b)(2)(B), activities that constitute a trade or business under paragraph (b)(2) of this section shall be treated as described in the preceding sentence if such activities were actively conducted throughout the pre-distribution period.

(ii) *Change and expansion.* The fact that a trade or business underwent change during the pre-distribution period (for example, by the addition of new or the dropping of old products, changes in production capacity, and the like) shall be disregarded, provided that the changes are not of such a character as to constitute the acquisition of a new or different business. In particular, if a SAG engaged in the active conduct of one trade or business during the pre-distribution period (the original business) purchased, created, or otherwise acquired (either directly, through an interest in a partnership, or as a result of a corporation becoming a subsidiary SAG member) another trade or business (the acquired business) in the same line of business, the acquisition of the acquired business is ordinarily treated as an expansion of the original business, all of which is treated as having been actively conducted by the acquiring SAG during the pre-distribution period, unless the acquired business effects a change of such a character as to constitute the acquisition of a new or different business. For purposes of this paragraph (b)(3)(ii), in determining whether an acquired business is in the same line of business as the original business, all facts and

circumstances shall be considered, including the following—

(A) Whether the product of the acquired business is similar to that of the original business;

(B) Whether the business activities associated with the operation of the acquired business are the same as the business activities associated with the operation of the original business; and

(C) Whether the operation of the acquired business involves the use of the experience and know-how that the owner of the original business developed in the operation of the original business or, alternatively, whether the operation of the acquired business draws to a significant extent on the existing experience and know-how of the owner of the original business and the success of the acquired business will depend in large measure on the goodwill associated with the original business and the name of the original business.

(iii) *Certain transactions with partnerships that do not constitute acquisitions.* If a partner is attributed the trade or business assets and activities of a partnership under paragraph (b)(2)(v) of this section, the partner's acquisition of such trade or business assets and activities from the partnership is not, in and of itself, the acquisition of a new or different trade or business. In addition, if a partner transfers to a partnership trade or business assets and activities that the partner actively conducted immediately before the transfer and, immediately after the transfer, the partner is attributed the trade or business assets and activities of the partnership under paragraph (b)(2)(v) of this section, such transfer is not, in and of itself, the acquisition of a new or different trade or business by the transferor partner.

(4) *Special rules for an acquisition of a trade or business*—(i) *In general*—(A) *Application of section 355(b)(2)(C).* Under sections 355(b)(2)(C) and (b)(3), a trade or business or an interest in a partnership engaged in a trade or business relied on to meet the requirements of section 355(b) must not have been acquired by either the DSAG or CSAG during the pre-distribution period unless it was acquired in a transaction in which no gain or loss was recognized. Further, a trade or business must not have been acquired by either the DSAG or CSAG during the pre-distribution period as a result of a corporation becoming a subsidiary SAG member unless such corporation became a subsidiary SAG member as a result of one or more transactions in which no gain or loss was recognized or by reasons of such transactions combined with acquisitions before the pre-distribution period. This paragraph (b)(4)(i)(A) also applies with respect to any acquisition during the pre-distribution period of a trade or business, an interest in a partnership engaged in a trade or business, or stock of a corporation engaged in a trade or business by a corporation that later becomes a subsidiary SAG member. See paragraphs (b)(4)(iv)(C) and (b)(4)(iv)(D) of this section regarding the application of this paragraph (b)(4)(i)(A) to certain multi-step acquisitions.

(B) *Application of section 355(b)(2)(D).* Under section 355(b)(2)(D), control of distributing must not have been acquired (at the time it was conducting the trade or business to be relied on) directly or indirectly by any distributee corporation, and control of controlled must not have been acquired (at the time it was conducting the trade or business to be relied on) directly or indirectly by the DSAG, during the pre-distribution period in one or more transactions in which gain or loss was recognized. This paragraph (b)(4)(i)(B) also applies with respect to any acquisition of stock of controlled during the pre-distribution period by a corporation that later becomes a DSAG member. For purposes of this paragraph (b)(4)(i)(B), and paragraphs (b)(4)(iii)(C) and (b)(4)(iv)(B) of this section, all distributee corporations that are affiliates shall be treated as one distributee corporation. This paragraph (b)(4)(i)(B) does not apply with respect to an acquisition of stock of any corporation other than distributing or controlled. See paragraph (b)(4)(iv)(B) of this section regarding the application of this paragraph (b)(4)(i)(B) to certain multi-step acquisitions of control. Further, see paragraph (b)(4)(iv)(F) of this section regarding certain acquisitions of stock in controlled to which paragraph (b)(4)(i)(A) of this section (and not this paragraph (b)(4)(i)(B)) applies.

(C) *Gain or loss recognized.* Any reference to gain or loss recognized includes gain or loss treated as recognized under paragraphs (b)(4)(ii) or (b)(4)(iv) of this section.

(ii) *Certain transactions treated as transactions in which gain or loss is recognized.* The common purpose of section 355(b)(2)(C) and (D) is to prevent the direct or indirect acquisition of the trade or business to be relied on by a corporation in exchange for assets in anticipation of a distribution to which section 355 would otherwise apply. Generally, if a DSAG member or controlled acquires the trade or business solely in exchange for distributing stock, distributing acquires control of controlled solely in exchange for distributing stock, or controlled acquires the trade or business from distributing solely in exchange for stock of controlled, in a transaction in which no gain or loss was recognized, the requirements of section 355(b)(2)(C) and (D) are satisfied. On the other hand, if the trade or business is acquired in exchange for assets of distributing (other than stock of a corporation in control of distributing used in a reorganization) the requirements of section 355(b)(2)(C) and (D) are generally not satisfied. For example, acquisitions by controlled (while controlled by distributing) from an unrelated party made in exchange for controlled stock have the effect of an indirect acquisition by distributing in exchange for distributing's assets. Such acquisitions violate the purpose of section 355(b)(2)(C) even if no gain or loss is recognized. Therefore, as provided in paragraphs (b)(4)(ii)(A) and (b)(4)(ii)(B) of this section, if the DSAG or CSAG acquires a trade or business, an interest in a partnership engaged in a trade or business, or stock of a corporation engaged in a trade or business in exchange for assets of the DSAG in a transaction in which no gain or loss is recognized, for purposes of paragraph (b)(4)(i) of this section such acquisition will be treated as one in which gain or loss is recognized.

(A) *Certain tax-free acquisitions made in exchange for assets.* An acquisition paid for in whole or in part, directly or indirectly, with assets of the DSAG will be treated as an acquisition in which gain or loss is recognized even if no gain or loss is actually recognized. Acquisitions described in this paragraph (b)(4)(ii)(A) include for example, a transaction in which the DSAG or CSAG acquires stock of a corporation engaged in the trade or business to be relied on by transferring assets not constituting the trade or business to be relied on to such corporation in exchange for stock of such corporation, the DSAG or CSAG acquires an interest in a partnership engaged in the trade or business to be relied on by contributing assets not constituting the trade or business to be relied on to the partnership, the DSAG or CSAG acquires stock of a corporation engaged in the trade or business in an exchange to which section 304(a)(1) applies, or distributing acquires a trade or business in exchange for its stock and assets in a transaction in which no loss is recognized by virtue of section 351(b). See also paragraph (b)(4)(iv)(E) of this section regarding the extent to which an acquisition involving the issuance of subsidiary stock constitutes an acquisition paid for with assets.

However, the assumption by the DSAG or CSAG of liabilities of a transferor shall not, in and of itself, be treated as the payment of assets if such assumption is not treated as the payment of money or other property under any other applicable provision. In addition, an acquisition in which no gain or loss is recognized consisting of a pro rata distribution to which section 355 applies (to the extent the stock with respect to which the distribution is made was not acquired during the pre-distribution period in a transaction in which gain or loss was recognized), a distribution from a partnership that is explicitly excluded from paragraph (b)(4)(ii)(B) of this section, a reorganization described in section 368(a)(1)(E) or (F), and an exchange to which section 1036 applies, are not acquisitions described in this paragraph (b)(4)(ii)(A).

(B) *Distributions from partnerships.* An acquisition consisting of a distribution from a partnership is generally an acquisition paid for with assets of the DSAG, and will be treated as an acquisition in which gain or loss is recognized even if no gain or loss is actually recognized. However, an acquisition consisting of a pro rata distribution from a partnership of stock or an interest in lower-tier partnership is not an acquisition described in this paragraph (b)(4)(ii)(B) (and consequently not described in paragraph (b)(4)(ii)(A) of this section) to the extent the distributee partner did not acquire the interest in the distributing partnership during the pre-distribution period in a transaction in which gain or loss was recognized and to the extent the distributing partnership did not acquire the distributed stock or partnership interest within such period. This paragraph (b)(4)(ii)(B) (and consequently paragraph (b)(4)(ii)(A) of this section) does not apply to any partnership distribution to which paragraph (b)(3)(iii) of this section (regarding distributions from partnerships that are not, in and of themselves, the acquisition of a new or different trade or business) applies.

(iii) *Certain transactions in which recognized gain or loss is disregarded.* The common purpose of section 355(b)(2)(C) and (D) is to prevent the direct or indirect acquisition of the trade or business to be relied on by a corporation in exchange for assets in anticipation of a distribution to which section 355 would otherwise apply. An additional purpose of section 355(b)(2)(D) is to prevent a distributee corporation from acquiring control of distributing in anticipation of a distribution to which section 355 would otherwise apply, enabling the disposition of controlled stock without recognizing the appropriate amount of gain. The acquisitions described in paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(C) of this section are not the types of acquisitions to which section 355(b)(2)(C) or (D) is intended to apply. Therefore, for purposes of paragraph (b)(4)(i) of this section, the recognition of gain or loss is disregarded if a trade or business, an interest in a partnership engaged in a trade or business, or stock of a corporation engaged in a trade or business is acquired in a transaction described in any of paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(C) of this section.

(A) *Transfers to controlled.* An acquisition by the CSAG from the DSAG provided the DSAG controls controlled immediately after the acquisition.

(B) *Cash for fractional shares.* An acquisition that would satisfy the requirements of paragraph (b)(4)(i) of this section but for the payment of cash to shareholders for fractional shares in the transaction, provided that the cash paid represents a mere rounding off of the fractional shares in the exchange and is not separately bargained for consideration.

(C) *Certain acquisitions of control of distributing.* A direct or indirect acquisition by a distributee corporation of control of distributing, in one or more transactions, where the basis of the acquired distributing stock in the hands of the distributee corporation is determined in whole by reference to the transferor's basis. This paragraph (b)(4)(iii)(C) is only applicable with respect to a distribution by the acquired distributing, and does not apply for purposes of any subsequent distribution by any distributee corporation.

(iv) *Operating rules for acquisitions*—(A) *Predecessors.* References to a corporation shall include references to a predecessor of such corporation. For this purpose, a predecessor of a corporation is a corporation that transfers its assets to such corporation in a transaction to which section 381 applies.

(B) *Certain multi-step acquisitions of control of distributing or controlled.* A distributee corporation's acquisition of stock in distributing or a DSAG's acquisition of stock in controlled in one or more transactions in which gain or loss was recognized during the pre-distribution period will not prevent a distributee corporation's acquisition of distributing stock or a DSAG's acquisition of controlled stock constituting control of distributing or controlled in one or more separate transactions in which no gain or loss is recognized from satisfying the requirements of paragraph (b)(4)(i)(B) of this section, provided that, at the time control of distributing or controlled is first acquired, the acquiring distributee corporation owns an amount of distributing stock or the acquiring DSAG owns an amount of controlled stock, as the case may be, constituting control that was acquired in one or more transactions in which no gain or loss was recognized or by reason of such transactions combined with acquisitions before the pre-distribution period. The principles of this paragraph (b)(4)(iv)(B) will be applied with respect to an indirect acquisition of distributing or controlled stock.

(C) *Certain multi-step acquisitions of a subsidiary SAG member.* An acquisition of stock in a corporation (target) by a SAG in one or more transactions in which gain or loss was recognized during the pre-distribution period will not prevent a SAG's acquisition of target stock resulting in target becoming a subsidiary SAG member in one or more separate transactions in which no gain or loss is recognized from satisfying the requirements of paragraph (b)(4)(i)(A) of this section, provided that, at the time that target first becomes a subsidiary SAG member, the SAG owns an amount of target stock meeting the requirements of section 1504(a)(2) that was acquired in one or more transactions in which no gain or loss was recognized or by reason of such transactions combined with acquisitions before the pre-distribution period. The principles of this paragraph (b)(4)(iv)(C) will be applied with respect to an indirect acquisition of target stock by the SAG.

(D) *Certain multi-step asset acquisitions.* Notwithstanding paragraph (b)(4)(i)(A) of this section, if immediately before a SAG's direct acquisition of a trade or business (or an interest in a partnership engaged in a trade or business) held by a corporation (owner) in a transaction to which section 381 applies and in which no gain or loss is recognized, the SAG owns an amount of stock of the owner that it acquired in one or more transactions during the pre-distribution period in which gain or loss was recognized such that all of the other stock of the owner does not meet the requirements of section 1504(a)(2), such direct acquisition shall be treated as a transaction in which gain or loss was recognized. The principles of this paragraph (b)(4)(iv)(D) will be applied with respect to an indirect acquisition of the owner stock by the SAG.

(E) *Acquisitions involving the issuance of subsidiary stock.* If a SAG directly or indirectly owns stock of a subsidiary (including a subsidiary SAG member) and the subsidiary directly or indirectly acquires a trade or business, an interest in a partnership engaged in a trade or business, or stock of a corporation engaged in a trade or business from a person other than such SAG in exchange for stock of such subsidiary in a transaction in which no gain or loss is recognized (the acquisition), solely for purposes of applying this paragraph (b)(4) with respect to the trade or business, partnership interest, or stock acquired by the subsidiary in the acquisition, the subsidiary's stock directly or indirectly owned by the SAG immediately after the acquisition is treated as acquired at the time of the acquisition in a transaction in which gain or loss is recognized.

(F) *Acquisitions of controlled stock where controlled is or becomes a DSAG member.* With respect to an acquisition of stock in controlled, if controlled is or becomes a DSAG member, paragraph (b)(4)(i)(A) of this section applies and paragraph (b)(4)(i)(B) of this section does not apply for purposes of determining whether the requirements of section 355(b) are satisfied with respect to controlled.

(G) *Treatment of stock received in certain tax-free exchanges.* Any stock received in a reorganization described in section 368(a)(1)(E) or (F), or in an exchange to which section 1036 applies, in which no gain or loss is recognized is treated as acquired in the same manner as the stock surrendered.

(H) *Situations where the separate existence of a subsidiary SAG member is respected.* The separate existence of a subsidiary SAG member will be respected for purposes of determining whether a transaction qualifies for nonrecognition treatment under other provisions of the Internal Revenue Code. For example, for purposes of determining whether section 351 applies or whether the transaction qualifies as a reorganization described in section 368(a), the separate existence of the subsidiary SAG member is respected.

(c) *Definitions.* For purposes of this section the following definitions apply:

(1) *Affiliate.* An affiliate is any member of an affiliated group as defined in section 1504(a) (without regard to section 1504(b)).

(2) *Controlled. Controlled* is the controlled corporation.

(3) *Distributing. Distributing* is the distributing corporation.

(4) *Pre-distribution period.* The *pre-distribution period* is the five-year period ending on the date of the distribution.

(d) *Conventions and examples*—(1) *Conventions.* The examples in paragraph (d)(2) of this section illustrate section 355(b) and this section. No inference should be drawn from any of these examples as to whether any requirements of section 355 other than those of section 355(b), as specified, are satisfied. Throughout these examples, C, D, D2, P, S, S1, S2, S3, T, X, Y, and Z are corporations, and Partnership is an entity that is treated as a partnership for Federal income tax purposes under § 301.7701–3 of this chapter. Further, assume any transfer described in *Examples 1* through *25* that is not identified as a purchase (defined in paragraph (d)(1)(iii) of this section) satisfies all the requirements of paragraph (b)(4) of this section as a transaction in which no gain or loss is recognized. Except as otherwise provided, for more than five years D has owned section 368(c) stock (as defined in paragraph (d)(1)(iv) of this section) but not section 1504(a)(2) stock (as defined in paragraph (d)(1)(v) of this section) of C. Furthermore, the following definitions apply:

(i) *ATB. ATB* is any active trade or business. ATB1 and ATB2 are not in the same line of business under paragraph (b)(3)(ii) of this section.

(ii) *New subsidiary.* A *new subsidiary* is a newly formed wholly owned corporation.

(iii) *Purchase.* A *purchase* is an acquisition for cash.

(iv) *Section 368(c) stock. Section 368(c) stock* is stock constituting control within the meeting of section 368(c).

(v) *Section 1504(a)(2) stock. Section 1504(a)(2) stock* is stock meeting the requirements of section 1504(a)(2).

(2) *Examples.* Generally, *Examples 1* and *2* illustrate the general requirements in paragraph (a) of this section, *Examples 3* through *9* illustrate the SAG rules in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, *Examples 10* through *25* illustrate the rules regarding the active trade or business and active conduct for the pre-distribution period in paragraphs (b)(2) and (b)(3) of this section, *Examples 26* through *40* illustrate the acquisition rules in paragraphs (b)(4)(i) through (b)(4)(iii) of this section, and *Examples 41* through *51* illustrate the operating rules for acquisitions in paragraph (b)(4)(iv) of this section. The examples are as follows:

Example 1. Spin-off. For more than five years, D and C have engaged in the active conduct of ATB1 and ATB2, respectively. D distributes the C stock to the D shareholders, and each corporation continues the active conduct of its respective trade or business. Because both D and C are engaged in the active conduct of a trade or business immediately after the distribution and such trades or businesses have been actively conducted by such corporations throughout the pre-distribution period, the requirements of section 355(b) have been satisfied. See paragraphs (a)(1) and (b)(3) of this section.

Example 2. Split-up. The facts are the same as *Example 1* except that D transfers all of its assets (including ATB1) other than the C stock to new subsidiary S, and then distributes the C stock and S stock to the D shareholders. Because C and S are respectively engaged in the active conduct of ATB2 and ATB1 immediately after the distribution, ATB2 has been actively conducted by C throughout the pre-distribution period, and together D (prior to the transfer to S) and S (after the transfer to S) have actively conducted ATB1 throughout the pre-distribution period, the requirements of section 355(b) have been satisfied. See paragraphs (a)(2) and (b)(3) of this section.

Example 3. Subsidiary SAG member's business. For more than five years, D has owned section 1504(a)(2) stock but not section 368(c) stock of S . Throughout this period, C and S have engaged in the active conduct of ATB1 and ATB2, respectively. In year 8, D distributes the C stock to the D shareholders. Because D owns section 1504(a)(2) stock of S, S is a DSAG member. See paragraph (b)(1)(iii) of this section. D and S are treated as one corporation for purposes of determining whether D is engaged in an active trade or business. See paragraph (b)(1)(ii) of this section. Therefore, D is engaged in the active conduct of ATB2 both throughout the pre-distribution period and immediately after the distribution. Accordingly, D and C both satisfy the requirements of section 355(b).

Example 4. Additional subsidiary SAG member shares acquired. The facts are the same as *Example 3* except that in year 6, D acquires the remaining S stock. D's acquisition of the remaining S stock in year 6 has no effect for purposes of determining whether D satisfies the requirements of section 355(b)(2)(C) because the DSAG is already engaged in the active conduct of ATB2. See paragraph (b)(1)(ii) of this section. Section 355(b)(2)(D) does not apply to D's acquisition of S stock. See paragraph (b)(4)(i)(B) of this section. Accordingly, D and C both satisfy the requirements of section 355(b).

Example 5. Segmented CSAG business. For more than five years, C has owned all the stock of S1, S2, and S3. Throughout this period, D has engaged in the active conduct of ATB1. Throughout this same period, S1, S2, and S3 have each engaged in a different essential segment of ATB2. While the three segments of ATB2 would together constitute the active conduct of a trade or business, none of S1, S2, or S3 would be considered engaged in the active conduct of an ATB individually. In year 6, D distributes the C stock to the D shareholders. C owns section 1504(a)(2) stock of S1, S2, and S3, therefore,

C, S1, S2, and S3 are CSAG members. See paragraph (b)(1)(iii) of this section. C, S1, S2, and S3 are treated as one corporation for purposes of determining whether C is engaged in the active conduct of a trade or business. See paragraph (b)(1)(ii) of this section. Therefore, C is engaged in the active conduct of ATB2 both throughout the pre-distribution period and immediately after the distribution. Accordingly, D and C both satisfy the requirements of section 355(b).

Example 6. Segmented DSAG business. The facts are the same as *Example 5* except that D owns all of the C stock and all of the S3 stock, and D transfers the S3 stock to C immediately prior to the distribution. Prior to D's transfer of the S3 stock to C, D owns section 1504(a)(2) stock of S3 and C, and C owns section 1504(a)(2) stock of S1 and S2, therefore, D, C, S1, S2, and S3 are DSAG members. See paragraph (b)(1)(iii) of this section. D, C, S1, S2, and S3 are treated as one corporation for purposes of determining whether D and C are engaged in the active conduct of a trade or business, and accordingly the transfer of the S3 stock to C is disregarded. See paragraph (b)(1)(ii) of this section. After the transfer, C owns section 1504(a)(2) stock of S3, and the CSAG includes C, S1, S2, and S3. See paragraph (b)(1)(iii) of this section. C, S1, S2, and S3 are treated as one corporation for purposes of determining whether C is engaged in the active conduct of a trade or business. See paragraph (b)(1)(ii) of this section. Throughout the pre-distribution period, D, C, S1, S2, and S3 are treated as one corporation and both D and C are engaged in the active conduct of ATB1 and ATB2. See paragraphs (b)(1) and (b)(2) of this section. Immediately after the distribution, D is engaged in the active conduct of ATB1 and C is engaged in the active conduct of ATB2. Because D and C were engaged in the active conduct of ATB1 and ATB2 throughout the pre-distribution period and, immediately after the distribution, D is engaged in the active conduct of ATB1 and C is engaged in the active conduct of ATB2, D and C both satisfy the requirements of section 355(b).

Example 7. Failed segmented business. The facts are the same as *Example 6* except that D owns section 368(c) stock but not section 1504(a)(2) stock of C. Prior to D's transfer of the S3 stock, the DSAG includes only D and S3, and the CSAG includes only C, S1, and S2. See paragraph (b)(1)(iii) of this section. Therefore, prior to the transfer of the S3 stock, ATB2 does not exist because no one SAG conducts all three of the essential segments of the trade or business. Accordingly, C does not satisfy the requirements of section 355(b) because ATB2 was not actively conducted throughout the pre-distribution period. See paragraph (b)(3)(i) of this section.

Example 8. Jointly owned partnership. For more than five years, D has owned all of the stock of C, and D and C each have owned a 17-percent interest in Partnership. Throughout this period, D and Partnership have engaged in the active conduct of ATB1 and ATB2, respectively. In year 6, D transfers its 17-percent interest in Partnership to C and distributes all of the C stock to the D shareholders. Because D owns section 1504(a)(2) stock of C, C is a DSAG member. See paragraph (b)(1)(iii) of this section. D and C are treated as one corporation for purposes of determining whether D and C are engaged in the active conduct of a trade or business. See paragraph (b)(1)(ii) of this section. Accordingly, throughout the pre-distribution period, D and C are each treated as owning a 34-percent interest in Partnership. As such, both D and C are treated as engaged in the active conduct of both ATB1 and ATB2 throughout the pre-distribution period. See paragraphs (b)(2)(v)(A) and (b)(2)(v)(B) of this section. The transfer of the Partnership interest is disregarded because it is between SAG members. See paragraph (b)(1)(ii) of this section. After the distribution, C owns 34 percent of Partnership and is therefore engaged in the active conduct of ATB2. See paragraphs (b)(2)(v)(A) and (b)(2)(v)(B) of this section. Therefore, D and C both satisfy the requirements of section 355(b).

Example 9. Sequential application of the SAG rule—(i) *Facts.* For more than five years, D2 has owned all of the stock of D, and D has owned all of the stock of C. Throughout this period, D2 has engaged in the active conduct of ATB1 and ATB2, and D has engaged in the active conduct of ATB1. C, individually, has not engaged in the active conduct of any ATB. In year 6, D distributes all of the C stock to D2 (first distribution). Immediately thereafter, D2 transfers ATB2 to C and distributes all of the C stock to the D2 shareholders (second distribution).

(ii) *Analysis—first distribution.* Because D owns section 1504(a)(2) stock of C, C is a DSAG member prior to the first distribution. See paragraph (b)(1)(iii) of this section. D and C are treated as one corporation for purposes of determining whether D and C are engaged in the active conduct of a trade or business with respect to the first distribution. See paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. Accordingly, throughout the pre-distribution period, D and C are each treated as engaged in ATB1 with respect to the first distribution. However, for purposes of determining whether D's distribution of the C stock to D2 satisfies the requirements of section 355(b) immediately after the first distribution, C is the only CSAG member (D2 is not a member of any SAG with respect to the first distribution). See paragraph (b)(1)(iii) of this section. Accordingly, C does not satisfy the requirements of section 355(b) with respect to the first distribution because C is not engaged in the active conduct of an ATB immediately after the first distribution.

(iii) *Analysis—second distribution.* Because D2 owns section 1504(a)(2) stock of D and C (and D owned section 1504(a)(2) stock of C before the first distribution), D2, D, and C are D2 SAG members throughout the pre-distribution period with respect to the second distribution. See paragraph (b)(1)(iii) of this section. Further, for purposes of the second distribution D's distribution of the C stock to D2 is disregarded because it is between D2 SAG members. See paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. D2, D, and C are treated as one corporation for purposes of determining whether D2 and C are engaged in the active conduct of a trade or business with respect to the second distribution. See paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. Accordingly, throughout the pre-distribution period, D2 and C are each treated as engaged in the active conduct of ATB1 and ATB2 with respect to the second distribution. The transfer of ATB2 to C is disregarded because it is between D2 SAG members. See paragraph (b)(1)(ii) of this section. Immediately after the second distribution, C is engaged the active conduct of ATB2. Therefore, D2 and C both satisfy the requirements of section 355(b) with respect to the second distribution.

Example 10. Limitations—securities and vacant land. For more than five years, D has owned investment securities and vacant land. D has conducted no activities with respect to the vacant land, but D will subsequently subdivide the vacant land, install streets and utilities, and sell the developed lots to various homebuilders. D cannot currently satisfy the requirements of section 355(b) because the holding of investment securities does not constitute the active conduct of a trade or business. See paragraph (b)(2)(iv)(A) of this section. Furthermore, no significant development activities have been conducted with respect to the vacant land. See paragraph (b)(3) of this section.

Example 11. Limitations—occupied real estate—active. For more than five years, D, a bank, has owned an eleven-story office building, the ground floor of which D has occupied while engaged in the active conduct of its banking business. The remaining ten floors are rented to various tenants. Throughout this period, the building has been managed, operated, repaired, and maintained by employees of D. D transfers the building along with the significant assets used to operate the building and the goodwill associated with the building to new subsidiary C and distributes the C stock to the D shareholders. Henceforth, C's employees will manage, operate, repair, and maintain the building. D and C both satisfy the requirements of section 355(b). See paragraph (b)(3) of this section.

Example 12. Limitations—occupied real estate—not active. For more than five years, D, a bank, has owned a two-story building, the ground floor and one half of the second floor of which D has occupied while engaged in the active conduct of its banking business. The other half of the second floor has been rented as storage space to a neighboring retail merchant. D transfers the building and the goodwill associated with the building to new subsidiary C and distributes the C stock to the D shareholders. After the distribution, D leases from C the space in the building that it formerly occupied. Under the lease, D will repair and maintain its portion of the building and pay property taxes and insurance. C does not satisfy the requirements of section 355(b) because it is not engaged in the active conduct of a trade or business immediately after the distribution. See paragraph (b)(2)(iv)(A) of this section. This example does not address the question of whether the activities of D with respect to the building prior to the separation would constitute the active conduct of a trade or business.

Example 13. No significant activities. For more than five years, D owned land on which

it has engaged in the active conduct of the ranching business. Oil has been discovered in the area, and it is apparent that oil may be found under the land on which the ranching business is conducted. D has engaged in no significant activities in connection with its mineral rights. D transfers its mineral rights to new subsidiary C and distributes the C stock to the D shareholders. C will actively pursue the development of the oil producing potential of the property. C does not satisfy the requirements of section 355(b) after the distribution because D was not engaged in significant exploitation activities with respect to the mineral rights throughout the pre-distribution period. See paragraph (b)(3) of this section.

Example 14. Vertical division—state contracts. For more than five years, D has engaged in the active conduct of a single business of constructing sewage disposal plants and other facilities. D transfers one half of its assets to new subsidiary C. These assets include a contract for the construction of a sewage disposal plant in State M, construction equipment, cash, goodwill, and other tangible and significant assets. D retains a contract for the construction of a sewage disposal plant in State N, construction equipment, cash, goodwill, and other tangible and significant assets. D distributes the C stock to one of D's shareholders in exchange for all of his D stock. D and C both satisfy the requirements of section 355(b). See paragraphs (b)(2) and (b)(3)(i) of this section.

Example 15. Vertical division—location. For more than five years, D has engaged in the active conduct of owning and operating two men's retail clothing stores, one in the downtown area of the City of G and one in a suburban area of G. D transfers the store building, fixtures, inventory, and other significant assets related to the operations of the suburban store and the goodwill attributable to that store to new subsidiary C. D also transfers to C the delivery trucks and delivery personnel that formerly served both stores. Henceforth, D will contract with a local public delivery service to make its deliveries. D retains the warehouses that formerly served both stores. Henceforth, C will lease warehouse space from an unrelated public warehouse company. D then distributes the C stock to the D shareholders. D and C both satisfy the requirements of section 355(b). See paragraphs (b)(2) and (b)(3)(i) of this section.

Example 16. Horizontal division—research. For more than five years, D has engaged in the active conduct of manufacturing and sale of household products. Throughout this period, D has maintained a research department for use in connection with its manufacturing activities. The research department has 30 employees actively engaged in the development of new products. D transfers the research department (which has significant assets and goodwill) to new subsidiary C and distributes the C stock to the D shareholders. After the distribution, C continues its research operations on a contractual basis with several corporations, including D. D and C both satisfy the requirements of section 355(b). See paragraphs (b)(2) and (b)(3)(i) of this section. The result is the same if, after the distribution, C continues its research operations but furnishes its services only to D. See paragraphs (b)(2) and (b)(3)(i) of this section. However, see § 1.355–2(d)(2)(iv)(C) (related function device factor) for possible evidence of device.

Example 17. Horizontal division—sales. For more than five years, D has engaged in the active conduct of processing and selling meat products. D derives income from no other source. D separates the sales function from the processing function by transferring the significant business assets related to the sales function, the goodwill associated with the sales function, and cash for working capital to new subsidiary C. D then distributes the C stock to the D shareholders. After the distribution, C purchases for resale the meat products processed by D. D and C both satisfy the requirements of section 355(b). See paragraphs (b)(2) and (b)(3)(i) of this section. However, see § 1.355–2(d)(2)(iv)(C) (related function device factor) for possible evidence of device.

Example 18. Expansion and vertical division—location. For more than five years, D has engaged in the active conduct of owning and operating hardware stores in several states. In year 6, D purchased all of the assets of a hardware store in State M, where D had not previously conducted business. In year 8, D transfers the State M hardware store and related significant assets and goodwill to new subsidiary C and distributes the C stock to the D shareholders. After the distribution, the State M hardware store has its own manager and is operated independently of the other stores. Because—

(i) The product of the State M hardware store is similar to the product of D's hardware stores in the other states;

(ii) The business activities associated with the operation of the State M hardware store are the same as the business activities associated with the operation of D's hardware stores in the other states; and

(iii) The operation of a hardware store in State M involves the use of the experience and know-how that D developed in the operation of the hardware stores in the other states, the hardware store in State M is in the same line of business as the hardware stores in the other states. Therefore, the acquisition of the State M hardware store constitutes an expansion of D's existing business and its acquisition does not constitute the acquisition of a new or different business under paragraph (b)(3)(ii) of this section. Accordingly, D and C both satisfy the requirements of section 355(b).

Example 19. Expansion and horizontal division—Internet. For more than five years, D has engaged in the active conduct of operating a retail shoe store business, under the name D. Throughout this period, D's sales are made exclusively to customers who frequent its retail stores in shopping malls and other locations. D's business enjoys favorable name recognition, customer loyalty, and other elements of goodwill in the retail shoe market. D creates an Internet Web site and begins selling shoes at retail on the Web site. To a significant extent, the operation of the Web site draws upon D's existing experience and know-how. The Web site is named ''D.com'' to take advantage of the name recognition, customer loyalty, and other elements of goodwill associated with D and the D name and to enhance the Web site's chances for success in its initial stages. Eight months after beginning to sell shoes on the Web site, D transfers all of the Web site's assets and liabilities (all of which include the significant assets and goodwill associated with the Web site's business) to new subsidiary C and distributes the C stock to the D shareholders. The product of the retail shoe store business and the product of the Web site are the same (shoes), and the principal business activities of the retail shoe store business are the same as those of the Web site (purchasing shoes at wholesale and reselling them at retail). Although selling shoes on a Web site requires some know-how not associated with operating a retail store, such as familiarity with different marketing approaches, distribution chains, and technical operations issues, the Web site's operation does draw to a significant extent on D's existing experience and know-how, and the Web site's success will depend in large measure on the goodwill associated with D and the D name. Therefore, the creation by D of the Internet Web site does not constitute the acquisition of a new or different business under paragraph (b)(3)(ii) of this section. Accordingly, it is an expansion of D's retail shoe store business, all of which is treated as having been actively conducted throughout the pre-distribution period. Therefore, D and C both satisfy the requirements of section 355(b).

Example 20. Expansion—acquiring a SAG member. For more than five years, D has owned all of the stock of C. Throughout this period, C and unrelated T have engaged in the active conduct of ATB1. In year 6, D purchases all of the T stock. In year 8, D distributes all of the C stock to the D shareholders. Throughout the period that C is a DSAG member, D is engaged in the active conduct of ATB1. See paragraph (b)(1)(ii) of this section. Moreover, because D acquired section 1504(a)(2) stock of T, D is treated as having acquired T's assets (and activities), and that acquisition constitutes an expansion of ATB1. See paragraphs (b)(1)(ii) and (b)(3)(ii) of this section. Therefore, D and C both satisfy the requirements of section 355(b). The result would be the same if D had owned all of the T stock for more than five years, and purchased all of the C stock in year 6. See paragraphs (b)(1)(ii), (b)(3)(ii), (b)(4)(i), and (b)(4)(iv)(F) of this section.

Example 21. No expansion—acquiring only control of controlled. For more than five years, D and unrelated C have engaged in the active conduct of ATB1. In year 6, D purchases section 368(c) stock but not section 1504(a)(2) stock of C. In year 8, D distributes the C stock to the D shareholders. While D and C are in the same line of business, the acquisition does not result in an expansion of D's business under paragraph (b)(3)(ii) of this section because D is not treated as having acquired C's assets (and activities). Accordingly, D has acquired control of C in violation of section 355(b)(2)(D). See paragraph (b)(4)(i)(B) of this section. However, if D acquires additional C

stock thereby causing C to become a DSAG member, D would be treated as having acquired C's assets (and activities) and the acquisition would constitute an expansion of ATB1. See paragraphs (b)(1)(ii), (b)(3)(ii), (b)(4)(i), and (b)(4)(iv)(F) of this section. In such a case, D and C both would satisfy the requirements of section 355(b).

Example 22. Partnership—meaningful but not significant. For more than five years, unrelated X and Y have owned a 20-percent and 33 1/3-percent interest, respectively, in Partnership. The remaining interests in Partnership are owned by unrelated parties. For more than five years, Partnership has manufactured power equipment. But for the performance of all its management functions by employees of X, Partnership would satisfy all the requirements of paragraph (b)(2)(i) of this section. X and/or Y will be attributed the trade or business assets and activities of Partnership only if the corporation satisfies the requirements of paragraph (b)(2)(v)(B) or (b)(2)(v)(C) of this section. See paragraph (b)(2)(v)(A) of this section. While X does not satisfy the requirements of paragraph (b)(2)(v)(B) of this section because X's interest in Partnership is not significant, under paragraph (b)(2)(v)(C) of this section, X owns a meaningful interest in Partnership and performs active and substantial management functions for the trade or business assets and activities of Partnership. Therefore, X is attributed the trade or business assets and activities of Partnership. Accordingly, X is engaged in the active conduct of the business of manufacturing power equipment. See paragraph (b)(2) of this section. In determining whether Y is engaged in the business of manufacturing power equipment, the management functions performed by X for Partnership are not taken into account. See paragraph (b)(2)(v)(A) of this section. Therefore, although Y is attributed Partnership's trade or business assets and activities under paragraph (b)(2)(v)(B) of this section because Y owns a significant interest in Partnership, Y is not engaged in the business of manufacturing power equipment because neither Y nor Partnership perform any management functions for the business. See paragraph (b)(2)(iii) of this section.

Example 23. Partnership—significant but not meaningful. The facts are the same as *Example 22* except that all the management functions related to the business of Partnership are performed by employees of Partnership. Because employees of Partnership perform all of the management functions related to the trade or business assets and activities of manufacturing power equipment, Partnership itself satisfies all the requirements of paragraph (b)(2)(i) of this section. X neither owns a significant interest in Partnership nor performs active and substantial management functions with respect to the trade or business assets and activities of Partnership. Accordingly, X does not satisfy the requirements of paragraph (b)(2)(v)(B) or (b)(2)(v)(C) of this section, X is not attributed the trade or business assets and activities of Partnership's business of manufacturing power equipment, and X is not engaged in the active conduct of the business of manufacturing power equipment. On the other hand, because Y owns a significant interest in Partnership, Y satisfies the requirements of paragraph (b)(2)(v)(B) of this section. Therefore, Y is attributed the trade or business assets and activities of Partnership's business. Accordingly, Y satisfies the requirements of paragraph (b)(2)(i) of this section and is engaged in the active conduct of the business of manufacturing power equipment.

Example 24. Partnership—significant by many. The facts are the same as Example 23 except that X, Y, and Z each own a 33 1/3-percent interest in Partnership. Because X, Y, and Z each own a significant interest in Partnership, each of X, Y, and Z satisfy the requirements of paragraph (b)(2)(v)(B) of this section. Accordingly, each of X, Y, and Z are attributed the trade or business assets and activities of Partnership, satisfy the requirements of paragraph (b)(2)(i) of this section, and are engaged in the active conduct of the business of manufacturing power equipment.

Example 25. Non-SAG affiliates—(i) *Facts.* For more than five years, X has owned 10 percent of the stock of D2, D2 has owned all the stock of D and S, and D has owned all the stock of C. Throughout this period, D has manufactured furniture that it sells to furniture stores and has been the principal owner of the goodwill and significant assets associated with that business and C has owned and operated a laundry business and has been the principal owner of the goodwill and significant assets associated with that business. Throughout this period, however, employees of S have performed all the active and substantial management and operational functions of the furniture business for D and the laundry business for C. D distributes the C stock to D2 (first distribution) and D2 distributes the C stock to X in exchange for all of X's D2 stock (second distribution). After the distributions, employees of X perform all the active and substantial management and operational functions of the laundry business for C that the employees of S performed before the distributions and the employees of S continue to perform the same activities for D as they did before the distributions.

(ii) *Analysis—first distribution.* In determining whether the furniture manufacturing business and laundry business have been actively conducted throughout the pre-distribution period and immediately after the first distribution, the activities performed for those businesses include activities performed by employees of affiliates of D and C (even if they are not DSAG or CSAG members). Accordingly, such activities include the activities performed by the employees of S for D and C. See paragraph (b)(2)(iii) of this section. D and C own the goodwill and significant assets associated with their respective businesses both throughout the pre-distribution period and immediately after the first distribution, and are treated as performing active and substantial management and operational functions for their respective businesses both throughout the pre-distribution period and immediately after the first distribution. Therefore, D and C both satisfy the requirements of section 355(b) with respect to the first distribution.

(iii) *Analysis—second distribution.* Because D2 owns section 1504(a)(2) stock of D, C, and S (and D owned section 1504(a)(2) stock of C before the first distribution), D2, D, C, and S are D2 SAG members throughout the pre-distribution period with respect to the second distribution. See paragraph (b)(1)(iii) of this section. Accordingly, D2, D, C, and S are treated as one corporation for purposes of determining whether D2 is engaged in an active trade or business with respect to the second distribution. See paragraph (b)(1)(ii) of this section. Accordingly, for purposes of the second distribution, D2 has been engaged in the furniture manufacturing business and the laundry business throughout the pre-distribution period. Further, for purposes of the second distribution D's distribution of the C stock to D2 is disregarded because it is between D2 SAG members. See paragraph (b)(1)(ii) of this section. D and S continue to be D2 SAG members immediately after the second distribution. See paragraph (b)(1)(iii) of this section. Accordingly, D2 is engaged in the furniture manufacturing business immediately after the second distribution. In determining whether C is engaged in the active conduct of a trade or business immediately after the second distribution, the activities performed for the laundry business include activities performed by employees of affiliates of C (even if they are not CSAG members). Accordingly, immediately after the second distribution, such activities include the activities performed for C by the employees of X. See paragraph (b)(2)(iii) of this section. C owns the goodwill and significant assets associated with the laundry business both throughout the pre-distribution period and immediately after the second distribution, and is treated as performing active and substantial management and operational functions both throughout the pre-distribution period and immediately after the second distribution. Therefore, D2 and C both satisfy the requirements of section 355(b) with respect to the second distribution.

Example 26. Purchased ATB and SAG member. For more than five years, P has owned all of the stock of D and S1, and D and S1 have owned all of the stock of S2 and S3, respectively. Throughout this period, S1 and S3 have engaged in the active conduct of ATB1 and ATB2, respectively. In year 6, S2 purchases ATB1 and all of the S3 stock from S1 on the same day. In year 6, the DSAG acquired ATB1 and ATB2 (as a result of S3 becoming a DSAG member) in a transaction in which gain or loss was recognized. Accordingly, if D were to make a distribution, it could not rely on ATB1 or ATB2 to satisfy the requirements of section 355(b) unless the DSAG's year 6 acquisition of ATB1 and ATB2 is not in the pre-distribution period. See paragraph (b)(4)(i)(A) of this section. The fact that S2 acquired ATB1 and the S3 stock from an affiliate is not relevant.

Example 27. Purchased ATB prior to entering. For more than five years, T has engaged in the active conduct of ATB1. In year 6, S purchased ATB1 from T. In year 7, D acquired all of the S stock from the S shareholders solely in exchange for D stock

in a transaction to which section 351 applied and in which no gain or loss was recognized. As a result, S became a DSAG member. Although S became a DSAG member in a transaction in which no gain or loss was recognized, S, a corporation that later became a DSAG member, acquired ATB1 in a transaction in which gain or loss was recognized. Accordingly, if the D were to make a distribution, it could not rely on ATB1 to satisfy the requirements of section 355(b) unless S's year 6 acquisition of ATB1 is not in the pre-distribution period. See paragraph (b)(4)(i)(A) of this section.

Example 28. ATB (or new SAG member) for stock of distributing or a corporation in control of distributing in a reorganization—transfer of ATB to controlled. For more than five years, unrelated T and Z have owned all of the stock of X and Y, respectively, and X and Y have engaged in the active conduct of ATB1 and ATB2, respectively. Unrelated P owns all of the stock of D. In year 6, D acquires all of X's assets (including ATB1) from X solely in exchange for D stock in a reorganization described in section 368(a)(1)(A), and all of Y's assets (including ATB2) from Y solely in exchange for P stock in a reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(D). No gain or loss is recognized on either acquisition. In a separate transaction, D transfers ATB2 to new subsidiary C in exchange for all of the C stock in a transaction that satisfies the requirements of section 351 and in which no gain or loss is recognized. If D were to distribute the C stock in a separate transaction, D and C can rely on ATB1 and ATB2, respectively, to satisfy the requirements of section 355(b). ATB1 and ATB2 were acquired in transactions in which no gain or loss was recognized, and were not acquired in exchange for assets of the DSAG. See paragraph (b)(4)(ii) of this section. The result would be the same if D acquired all of the assets of T (including the X stock) and Z (including the Y stock) in the reorganizations instead of acquiring the assets of X and Y, and then transferred the Y stock to C. See paragraphs (b)(1)(ii) and (b)(4)(ii) of this section.

Example 29. Taxable transfer of ATB by distributing to controlled. The facts are the same as the original facts in Example 28 except that before and after the transfer to C, D owned section 368(c) stock but not section 1504(a)(2) stock of C, and recognized gain under section 357(c) gain on the transfer of ATB2 to C. D and C can rely on ATB1 and ATB2, respectively, to satisfy the requirements of section 355(b). See paragraph (b)(4)(iii)(A) of this section. The result would be the same if C purchased ATB2 from D. The result would also be the same if D acquired all of the assets of T (including the X stock) and Z (including the Y stock) in the reorganizations instead of acquiring the assets of X and Y, and then C purchased the Y stock from D. See paragraphs (b)(1)(ii) and (b)(4)(iii)(A) of this section.

Example 30. Assets for controlled stock in a section 351 transaction. For more than five years, unrelated D and C have engaged in the active conduct of ATB1 and ATB2, respectively. In year 6, D transfers trucks to C to be used in ATB2 in exchange for section 368(c) stock of C in a transaction to which section 351 applies and in which no gain or loss is recognized. If D were to distribute the C stock, C could not rely on ATB2 to satisfy the requirements of section 355(b) unless D's year 6 acquisition of the C stock is not in the pre-distribution period because D acquired section 368(c) stock of C, a corporation engaged in ATB2, in exchange for assets not constituting the trade or business. See paragraphs (b)(4)(i)(B) and (b)(4)(ii)(A) of this section. The result would be the same even if C became a DSAG member as a result of the year 6 transfer. See paragraphs (b)(4)(i)(A) and (b)(4)(ii)(A) of this section.

Example 31. ATB for controlled stock in a reorganization. For more than five years, unrelated D and T have engaged in the active conduct of ATB1 and ATB2, respectively. Throughout this period, D has owned all of the sole class of C stock. In year 6, T merges into C solely in exchange for C stock in a reorganization described in section 368(a)(1)(A) and in which no gain or loss is recognized. As a result, the T shareholders receive 20 percent of the sole class of C stock. Because C acquired ATB2 in exchange for C stock, solely for purposes of determining whether ATB2 can be relied on to satisfy the requirements of section 355(b), D is treated as having acquired its 80 percent of the C stock in year 6 in a transaction in which gain or loss was recognized. See paragraph (b)(4)(iv)(E) of this section. Accordingly, if D were to distribute the C stock, C could not rely on ATB2 to satisfy the requirements of section 355(b) unless C's year 6 acquisition of ATB2 is not in the pre-distribution period because ATB2 was in effect indirectly acquired in exchange for D's assets. See paragraphs (b)(4)(i)(A), (b)(4)(ii)(A), and (b)(4)(iv)(E) of this section.

Example 32. ATB and controlled stock for distributing stock in a section 351 transaction. For more than five years, T and unrelated C have engaged in the active conduct of ATB1 and ATB2, respectively. Unrelated P owns all of the stock of D. In year 6, P purchases ATB1 from T, and section 368(c) stock of C from the C shareholders. In year 6, P contributes the C stock and ATB1 to D solely in exchange for additional D stock in a transaction to which section 351 applies and in which no gain or loss is recognized. If D were to subsequently distribute the C stock in a separate transaction, D can rely on ATB1, and C can rely on ATB2 to satisfy the requirements of section 355(b) because neither ATB1 nor control of C were acquired in exchange for assets of the DSAG. See paragraphs (b)(4)(i)(A), (b)(4)(i)(B), and (b)(4)(ii) of this section. The fact that P, an affiliate of D, purchased ATB1 and section 368(c) stock of C in year 6 is not relevant.

Example 33. ATB for distributing stock in a section 351 transaction with section 357(c) gain. The facts are the same as *Example 32* except that D has owned section 368(c) stock of C for more than five years, P only purchases ATB1 from T, and P recognizes under section 357(c) gain on the transfer of ATB1 to D as a result of D assuming liabilities of P. D cannot rely on ATB1 to satisfy the requirements of section 355(b) until D's year 6 acquisition of ATB1 is no longer in the pre-distribution period because D acquired ATB1 in a transaction in which gain or loss was recognized. See paragraph (b)(4)(i)(A) of this section.

Example 34. Partnership distributions. For more than five years, X and Y have engaged in the active conduct of ATB1 and ATB2, respectively. Throughout this period, unrelated D has owned a 90-percent interest in Partnership. D is attributed any trade or business assets and activities of Partnership under paragraph (b)(2)(v) of this section. In year 6, Partnership purchases ATB1 from X and all of the Y stock from its owner. In year 9, Partnership distributes ATB1 and all of the Y stock to D in a non-liquidating distribution. Assume that no gain or loss is recognized by Partnership or any partner on the distribution. As a result of the distribution, Y becomes a DSAG member, and D is treated as having acquired Y's assets (and activities). See paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. If D were to make a distribution, ATB1 could not be relied on to satisfy the requirements of section 355(b) unless Partnership's year 6 acquisition of ATB1 is not in the pre-distribution period. See paragraphs (b)(2)(v), (b)(3)(iii), and (b)(4)(ii)(B) of this section. If D were to make a distribution, ATB2 could not be relied on to satisfy the requirements of section 355(b) unless D's year 9 acquisition of the Y stock is not in the pre-distribution period. See paragraphs (b)(2)(v)(A) and (b)(4)(ii)(B) of this section. Alternatively, if in year 9 Partnership only makes a pro rata distribution of all the Y stock to its partners such that D receives 90 percent of the Y stock, ATB2 cannot be relied on until Partnership's year 6 acquisition of all of the Y stock is no longer in the pre-distribution period. See paragraph (b)(4)(ii)(B) of this section.

Example 35. Partnership distribution (new SAG member). For more than five years, D has owned a 50-percent interest in Partnership. The remaining interests in Partnership are owned by unrelated parties. Throughout this period, Partnership has engaged in the active conduct of ATB1, and D has been attributed the trade or business assets and activities of Partnership's ATB1 under paragraph (b)(2)(v) of this section. In year 6, pursuant to an integrated plan, Partnership contributes ATB1 to new subsidiary S, and distributes all of the S stock to D in liquidation of D's 50-percent interest in Partnership. Assume that no gain or loss is recognized by Partnership or any partner on the distribution. As a result, S becomes a DSAG member, and D is treated as having acquired S's assets (and activities). See paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. Because D was attributed ATB1 immediately before the incorporation and distribution by Partnership, and S became a DSAG member as a result of the distribution, Partnership's distribution of the S stock to D is not an acquisition of ATB1. See paragraphs (b)(3)(iii) and (b)(4)(ii)(B) of this section. Accordingly, if D were to make a distribution, it can rely on ATB1 to satisfy the requirements of section 355(b).

Example 36. Transfer of partnership in a reorganization and distributions. For more than five years, T has owned a 40-percent interest in Partnership which has engaged in the active conduct of ATB1. Throughout this

period, T has been attributed the trade or business assets and activities of Partnership's ATB1 under paragraph (b)(2)(v) of this section. In year 6, T merges into S, a wholly owned subsidiary of unrelated D, solely in exchange for D stock in a reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(D). No gain or loss is recognized. If D were to make a distribution, D can rely on ATB1 because ATB1 has been actively conducted throughout the pre-distribution period, and the interest in Partnership was acquired in a transaction in which no gain or loss was recognized and was not acquired in exchange for assets of the DSAG. See paragraphs (b)(2)(v), (b)(3)(i), and (b)(4)(ii) of this section. The results would be the same if T owned only a 20-percent interest in Partnership, employees of T performed active and substantial management functions for Partnership's trade or business assets and activities prior to the merger, and employees of S (or an affiliate of S) performed active and substantial management functions for Partnership's trade or business assets and activities after the merger. See paragraphs (b)(2)(iii), (b)(2)(v), (b)(3), and (b)(4)(ii) of this section.

Example 37. Transferred ATB sold (SAG member). For more than five years, D and unrelated T have engaged in the active conduct of ATB1 and ATB2, respectively. In year 6, D contributes ATB1 to T in exchange for T stock in a transaction to which section 351 applies. No gain or loss is recognized on the contribution. Immediately after the contribution T is a DSAG member. In year 8, in response to unanticipated market changes, T sells ATB1 to an unrelated third party. Although T became a DSAG member as a result of D acquiring T stock in exchange for ATB1 in a transaction in which no gain or loss was recognized, ATB1 is not the trade or business to be relied upon. Accordingly, D cannot rely on ATB2 until the year 6 transaction is no longer in the pre-distribution period because D acquired ATB2 in exchange for D's assets not constituting the active trade or business to be relied on. See paragraphs (b)(4)(i)(A) and (b)(4)(ii)(A) of this section.

Example 38. Transferred ATB sold (partnership). The facts are the same as *Example 37* except that, in year 6, D and T contribute ATB1 and ATB2, respectively, to Partnership in a transaction to which section 721 applies. In the exchange, D and T each receive a 50-percent interest in Partnership. In year 8, in response to unanticipated market changes, Partnership sells ATB1 to an unrelated third party. If D were to make a distribution, D could not rely on ATB2 under paragraph (b)(2)(v)(B) of this section unless the year 6 transaction is not in the pre-distribution period because D acquired ATB2 in exchange for D's assets not constituting the trade or business to be relied on. See paragraphs (b)(4)(i)(A) and (b)(4)(ii)(A) of this section.

Example 39. Indirect acquisition of control of distributing's ATB. For more than five years, D and T have engaged in the active conduct of ATB1 and ATB2, respectively. All of the T stock is owned by individuals. In year 6, T purchases all the stock of D in a transaction in which gain or loss is recognized. In a separate transaction, T merges downstream into D solely in exchange for D stock in a reorganization described in section 368(a)(1)(A) and (D). No gain or loss is recognized. In year 7, D transfers ATB2 formerly conducted by T to new subsidiary C, and then distributes the C stock to the D shareholders. Although D acquired ATB2 solely in exchange for D stock in a transaction in which no gain or loss was recognized, the requirements of section 355(b) are not satisfied because ATB1, the business of D, was indirectly acquired by T, a predecessor of D, during the pre-distribution period in a transaction in which gain or loss was recognized. See paragraphs (b)(4)(i)(A) and (b)(4)(iv)(A) of this section. The result would also be the same if prior to the year 6 acquisition D and wholly owned subsidiary C were engaged in the active conduct of ATB1 and ATB2, respectively, and T had no ATB.

Example 40. Exception for corporate distributee. For more than five years, T has owned all of the stock of D which in turn owned all of the stock of C. Throughout this period, D and C have engaged in the active conduct of ATB1 and ATB2, respectively. In year 6, P purchases all the stock of T. In year 7, P liquidates T in a transaction in which no gain or loss is recognized under section 332. Under section 334(b), P's basis in the D stock is determined in whole by reference to T's basis in the D stock. In year 8, D distributes the C stock to P. While the D stock was indirectly acquired in a taxable transaction, the adjusted basis that P, the distributee corporation, has in the D stock was determined in whole by reference to T's adjusted basis. Accordingly, D and C satisfy the requirements of section 355(b). See paragraph (b)(4)(iii)(C) of this section. If P were to distribute either the D stock or C stock, neither ATB1 nor ATB2 could be relied on unless the year 6 acquisition of the T stock is not in the pre-distribution period. See paragraph (b)(4)(iii)(C) of this section. The result would be the same if P acquired all of T's assets in exchange for P stock and other property in a reorganization described in section 368(a)(1)(A).

Example 41. Acquisition of section 368(c) stock of controlled, DSAG member. For more than five years, D has owned section 1504(a)(2) stock but not section 368(c) stock of C. Throughout this period, C has engaged in the active conduct of ATB1. In year 6, D purchased additional shares of C stock. As a result, D acquired section 368(c) stock of C. If D were to make a distribution of the C stock, C could rely on ATB1 to satisfy the requirement of section 355(b). C was a DSAG member, so D was engaged in ATB1 prior to the year 6 purchase of additional C stock. Accordingly, D's acquisition of additional stock of a DSAG member is disregarded in applying paragraph (b)(4)(i)(A) of this section, and paragraph (b)(4)(i)(B) of this section does not apply to this acquisition of additional C stock. See paragraphs (b)(1)(ii) and (b)(4)(iv)(F) of this section.

Example 42. Controlled becoming a DSAG member. For more than five years, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. Throughout this period, D and C have engaged in the active conduct of ATB1 and ATB2, respectively. In year 6, D purchases the remaining C stock. If D distributes all the C stock, C could not rely on ATB2 to satisfy the requirements of section 355(b) because C became a DSAG member (and thus D acquired ATB2) in a transaction in which gain or loss was recognized. See paragraphs (b)(1)(ii), (b)(4)(i)(A), and (b)(4)(iv)(F) of this section.

Example 43. Nontaxable multi-step acquisition of control. For more than five years, unrelated D and C have engaged in the active conduct of ATB1 and ATB2, respectively. C has two classes of stock outstanding. X owns all 95 shares of the class A stock of C, representing 95 percent of the voting power and 70 percent of the value, and Y owns all of the class B stock of C, representing five percent of the voting power and 30 percent of the value. In year 6, D acquires 10 shares of class A C stock from X in a transaction in which gain or loss was recognized. In year 7, in a separate transaction, D acquires an additional 80 shares of class A C stock from X solely in exchange for D voting stock in a reorganization described in section 368(a)(1)(B). No gain or loss is recognized. In year 8, in a separate transaction, D acquires the remaining five shares of class A C stock from X in a transaction in which gain or loss was recognized. Because D only acquires 70 percent of the value of C stock, C does not become a DSAG member. In year 9, D distributes the 95 shares of class A C stock to the D shareholders. At the time D first acquired control of C, D owned an amount of C stock constituting control that was acquired in a transaction in which no gain or loss was recognized. Accordingly, D and C both satisfy the requirements of section 355(b). See paragraphs (b)(4)(i)(B) and (b)(4)(iv)(B) of this section.

Example 44. Taxable multi-step acquisition of control. The facts are the same as *Example 43* except that in year 7 D acquires 70 shares of class A C stock solely in exchange for D voting stock in a reorganization described in section 368(a)(1)(B). No gain or loss is recognized. At the time D first acquired control of C, D did not own an amount of C stock constituting control that was acquired in one or more transactions in which no gain or loss was recognized or by reason of such transactions combined with acquisitions before the pre-distribution period. Accordingly, C cannot rely on ATB2 to satisfy the requirements of section 355(b) until D's year 6 acquisition of the 10 shares of class A C stock is no longer in the pre-distribution period. See paragraphs (b)(4)(i)(B) and (b)(4)(iv)(B) of this section.

Example 45. Taxable acquisition of control. For more than five years, unrelated D and C have engaged in the active conduct of ATB1 and ATB2, respectively. In year 6, D acquires section 368(c) stock but not section 1504(a)(2) stock of C from unrelated T in a reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(E) through the use of a newly created transitory subsidiary of D. In the reorganization, T receives consideration 95 percent of which is D voting common stock and five percent of which is cash. Because D acquired control of C in a single transaction in which gain or loss

was recognized, paragraph (b)(4)(iv)(B) of this section does not apply. Accordingly, C cannot rely on ATB2 to satisfy the requirements of section 355(b) until D's year 6 acquisition of control of C is no longer in the pre-distribution period. See paragraph (b)(4)(i)(B) of this section.

Example 46. Taxable multi-step indirect acquisition of control. For more than five years, C has engaged in the active conduct of ATB1. T owns exactly 80 percent of the total combined voting power of all classes of C stock entitled to vote and 80 percent of the total number of shares of all other classes of C stock, but T owns less than 80 percent of the total value of the C stock. In year 6, unrelated D acquires 10 percent of the sole outstanding class of stock of T in a transaction in which gain or loss is recognized. In year 8, in a separate transaction, T merges into D solely in exchange for D stock in a reorganization described in section 368(a)(1)(A). No gain or loss is recognized. As a result, D owns section 368(c) stock of C. Because D indirectly acquired 10 percent of the C stock owned by T in year 6, at the time D first acquired control of C, D did not own stock constituting control of C that it acquired in one or more transactions in which no gain or loss was recognized or by reason of such transactions combined with acquisitions before the pre-distribution period. Accordingly, C cannot rely on ATB1 to satisfy the requirements of section 355(b) until D's year 6 acquisition of the T stock is no longer in the pre-distribution period. See paragraphs (b)(4)(i)(B) and (b)(4)(iv)(B) of this section.

Example 47. Nontaxable multi-step acquisition of SAG member (or ATB). For more than five years, S has engaged in the active conduct of ATB1. X owns all 100 shares of the sole outstanding class of S stock. In year 6, unrelated D acquires 10 shares of S stock from X in a transaction in which gain or loss was recognized. In year 7, in a separate transaction, D acquires an additional 80 shares of S stock from X solely in exchange for D voting stock in a reorganization described in section 368(a)(1)(B). No gain or loss is recognized. As a result, S becomes a DSAG member. In year 8, in a separate transaction, D acquires another 5 shares of S stock from X in a transaction in which gain or loss was recognized. Because at the time S first became a DSAG member, D owned an amount of S stock meeting the requirements of section 1504(a)(2) that was acquired in a transaction in which no gain or loss was recognized, D can rely on ATB1 to satisfy the requirements of section 355(b) as of the year 7 transaction. See paragraphs (b)(4)(i)(A) and (b)(4)(iv)(C) of this section. The acquisition by D of other S stock in a separate transaction in which gain or loss was recognized during the pre-distribution period is disregarded. See paragraph (b)(1)(ii) of this section. The result would be the same if, in year 7, instead of acquiring S stock in a reorganization described in section 368(a)(1)(B), S merged into D in exchange for D stock in a reorganization described in section 368(a)(1)(A) in which no gain or loss was recognized. See paragraphs (b)(4)(i)(A) and (b)(4)(iv)(D) of this section.

Example 48. Taxable multi-step acquisition of SAG member (or ATB). The facts are the same as *Example 47* except that in year 6 D acquires 21 shares of S stock in a transaction in which gain or loss was recognized, and in year 7, in a separate transaction, D acquires an additional 79 shares of S stock solely in exchange for D voting stock in a reorganization described in section 368(a)(1)(B). No gain or loss is recognized, and S becomes a DSAG member. D cannot rely on ATB1 to satisfy the requirements of section 355(b) until D's year 6 acquisition of the 21 shares of S stock is no longer in the pre-distribution period because at the time S first became a DSAG member D did not own an amount of S stock meeting the requirements of section 1504(a)(2) that was acquired in one or more transactions in which no gain or loss was recognized or by reason of such transactions combined with acquisitions before the pre-distribution period. See paragraphs (b)(4)(i)(A) and (b)(4)(iv)(C) of this section. The result would be the same if, in year 7, in a separate transaction, instead of D's acquiring S stock, S merged into D in exchange for D stock in a reorganization described in section 368(a)(1)(A) in which no gain or loss was recognized. See paragraphs (b)(4)(i)(A) and (b)(4)(iv)(D) of this section. The result would also be the same if in year 6 D acquired 10 shares of S stock in a transaction in which gain or loss was recognized and, in year 7, in a separate transaction, D acquired an additional 70 shares of S stock solely in exchange for D voting stock in a reorganization described in section 368(a)(1)(B). See paragraphs (b)(4)(i)(A) and (b)(4)(iv)(C) of this section.

Example 49. Nontaxable multi-step indirect acquisition using subsidiary stock. For more than five years, X has owned all of the sole outstanding class of S stock. Throughout this period, S and unrelated T have engaged in the active conduct of ATB1 and ATB2, respectively. In year 6, T merges into S solely in exchange for S stock in a reorganization described in section 368(a)(1)(A). No gain or loss is recognized. Immediately after the merger, X and the former T shareholders own 80 percent and 20 percent of the S stock, respectively. In year 8, unrelated D acquires all of the S shares held by X solely in exchange for D voting stock in a reorganization described in section 368(a)(1)(B). No gain or loss is recognized. As a result, S becomes a DSAG member. Because D acquired ATB1 and ATB2 in a transaction in which no gain or loss was recognized, solely in exchange for D stock, D can rely on both ATB1 and ATB2 to satisfy the requirements of section 355(b). Because X is neither a predecessor of D nor a DSAG member, paragraph (b)(4)(iv)(E) of this section is not applicable.

Example 50. Taxable multi-step indirect acquisition using subsidiary stock. The facts are the same as *Example 49* except that, for more than five years, D has owned 50 percent of the sole outstanding class of X stock. In year 8, instead of D acquiring the S stock, S merges into D solely in exchange for D stock in a reorganization described in section 368(a)(1)(A). No gain or loss is recognized. Because D indirectly owned S stock and S acquired ATB2 in exchange for S stock, paragraph (b)(4)(iv)(E) of this section is applicable. Under paragraph (b)(4)(iv)(E) of this section, for purposes of applying paragraph (b)(4) of this section with respect to ATB2, D is treated as having indirectly acquired in year 6 the S stock it indirectly owns immediately after the merger of T into S in a transaction in which gain or loss was recognized. Thus, D is treated as having indirectly acquired 40 percent of the S stock in a transaction in which gain or loss is recognized at the time of the merger of T into S. Further, if the merger of T into S is in the pre-distribution period, under paragraph (b)(4)(iv)(D) of this section, D will be treated as having acquired ATB2 in a transaction in which gain or loss is recognized because, immediately before the merger of S into D, D indirectly owned 40 percent of the S stock that had been acquired in a transaction in which gain or loss was recognized. Accordingly, D cannot rely on ATB2 to satisfy the requirements of section 355(b) until the year 6 merger of T into S is no longer in the pre-distribution period. However, D can rely on ATB1 to satisfy the requirements of section 355(b). Alternatively, if X, instead if S, merged into D, S would become a DSAG member and X would be a predecessor of D. If so, for purposes of applying paragraph (b)(4) of this section with respect to ATB2, D is treated as having acquired 80 percent of the S stock in year 6 in a transaction in which gain or loss was recognized. Accordingly, D cannot rely on ATB2 to satisfy the requirements of section 355(b) until the year 6 merger of T into S is no longer in the pre-distribution period. See paragraphs (b)(1)(iii), (b)(4)(i)(A), (b)(4)(iv)(A), and (b)(4)(iv)(E) of this section. However, D can rely on ATB1 to satisfy the requirements of section 355(b).

Example 51. Taxable multi-step indirect acquisition of SAG member (or ATB). For more than five years, T has engaged in the active conduct of ATB1. Throughout this period, X owned all of the sole outstanding class of T stock, and D owned 50 percent of the sole outstanding stock of S. In year 6, S acquires 50 percent of the sole outstanding class of the X stock in a transaction in which gain or loss is recognized. In year 8, X merges into D solely in exchange for D stock. No gain or loss is recognized. As a result, T becomes a DSAG member. Because D indirectly acquired more than 20 percent of the T stock (D indirectly acquired 25 percent of T) in year 6, at the time T first became a DSAG member D did not own an amount of T stock meeting the requirements of section 1504(a)(2) that it acquired in one or more transactions in which no gain or loss was recognized or by reason of such transactions combined with acquisitions before the predistribution period. Accordingly, D cannot rely on ATB1 to satisfy the requirements of section 355(b) until D's year 6 indirect acquisition of the T stock is no longer in the pre-distribution period. See paragraphs (b)(4)(i)(A) and (b)(4)(iv)(C) of this section. The result would be the same if, instead of X, in year 8, T merged into D solely in exchange for D stock. See

paragraphs (b)(4)(i) and (b)(4)(iv) of this section.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 010–2007]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to amend the Privacy Act exemptions to the National Security Division's system of records as described in today's notice section of the **Federal Register**: Foreign Intelligence and Counterintelligence Records System (JUSTICE/NSD–001), which incorporates three previous systems of records of the Office of Intelligence Policy and Review (OIPR). These systems of records are the ''Policy and Operational Records System, OIPR–001'' last published in the **Federal Register** January 26, 1984 (49 FR 3281); ''Foreign Intelligence Surveillance Act Records System, OIPR–002'' last published in the **Federal Register** January 26, 1984 (49 FR 3282); and ''Litigation Records System, OIPR–003'' last published in the **Federal Register** January 26, 1984 (49 FR 3284).

DATES: Submit any comments by June 18, 2007.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1331 Pennsylvania Avenue, NW., Washington, DC 20530 (1400 National Place Building), Facsimile Number (202) 307–1853. To ensure proper handling, please reference the AAG/A Order No. on your correspondence. You may review an electronic version of this proposed rule at *http://www.regulations.gov.* You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: *DOJPrivacyACTProposedRegulations@usdoj.gov;* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

FOR FURTHER INFORMATION CONTACT: GayLa Sessoms, (202) 616–5460.

SUPPLEMENTARY INFORMATION: The Department proposes to exempt JUSTICE/NSD–001 from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f); (g); and (h). These exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2) or (5).

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant impact on a substantial number of small business entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, and 9701.

2. Section 16.74 is revised to read as follows:

§ 16.74 Exemption of National Security Division System-limited access.

(a) The following system of records is exempted from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2) and (5): Foreign Intelligence and Counterintelligence Records System (JUSTICE/NSD–001). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2), and (5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) *Subsection (c)(3).* To provide the target of a surveillance or collection activity with the disclosure accounting records concerning him or her would hinder authorized United States intelligence activities by informing that individual of the existence, nature, or scope of information that is properly classified pursuant to Executive Order 12958, as amended, and thereby cause damage to the national security.

(2) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1).* Disclosure of foreign intelligence and counterintelligence information would interfere with collection activities, reveal the identity of confidential sources, and cause damage to the national security of the United States. To ensure unhampered and effective collection and analysis of foreign intelligence and counterintelligence information, disclosure must be precluded.

(4) *Subsection (d)(2).* Amendment of the records would interfere with ongoing intelligence activities thereby causing damage to the national security.

(5) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1).* It is often impossible to determine in advance if intelligence records contained in this system are relevant and necessary, but, in the interests of national security, it is necessary to retain this information to aid in establishing patterns of activity and provide intelligence leads.

(7) *Subsection (e)(2).* Although this office does not conduct investigations, the collection efforts of agencies that supply information to this office would be thwarted if the agencies were required to collect information with the subject's knowledge.

(8) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of collection activity and compromise national security. For example, a target could, once made aware that collection activity exists, alter his or her manner of engaging in intelligence or terrorist activities in order to avoid detection.

(9) *Subsections (e)(4)(G), (H) and (I), and (f).* These subsections are inapplicable to the extent that this system is exempt from the access provisions of subsection (d).

(10) *Subsection (e)(5).* It is often impossible to determine in advance if intelligence records contained in this system are accurate, relevant, timely and complete, but, in the interests of national security, it is necessary to retain this information to aid in establishing patterns of activity and providing intelligence leads.

(11) *Subsection (e)(8).* Serving notice could give persons sufficient warning to evade intelligence collection and anti-terrorism efforts.

(12) *Subsections (g) and (h).* These subsections are inapplicable to the extent that this system is exempt from

other specific subsections of the Privacy Act.

Dated: April 27, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

[FR Doc. E7–8764 Filed 5–7–07; 8:45 am]

BILLING CODE 4410–AW–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–07–026]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Sunset Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the drawbridge operating regulations that govern the S.R. 1172 Bridge, at Atlantic Intracoastal Waterway mile 337.9, Sunset Beach, NC. This proposal would allow the bridge to open on the hour on signal for pleasure vessels from 7 a.m. to 9 p.m. year round. The reason for this change would be to improve the schedule for both roadway and waterway users.

DATES: Comments and related material must reach the Coast Guard on or before June 22, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (dpb), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–07–026, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (dpb), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The S.R. 1172 Bridge at Sunset Beach has zero vertical clearance to vessels when in the closed position at mean high water.

The North Carolina Department of Transportation (NCDOT) owns and operates this single-lane, floating steel-barge, swing-span referred to as a pontoon drawbridge. Current regulations set out at 33 CFR 117.821 (a)(5) require the bridge to open on signal for commercial vessels at all times; and on the hour on signal for pleasure vessels between 7 a.m. and 7 p.m., April 1 to November 30, except that on Saturdays, Sundays, and Federal holidays, from June 1 through September 30, the bridge shall open on signal on the hour between 7 a.m. and 9 p.m.

NCDOT and the residents of the Town of Sunset Beach requested a change to the operating regulations for the S.R. 1172 Bridge in an effort to improve the schedule for both roadway and waterway users. The S.R. 1172 Bridge provides the only route on and off Sunset Beach Island. This proposal would not change the requirement for the bridge to open on signal at any time for commercial vessels.

The Coast Guard reviewed the bridge logs for 2005 and 2006 provided by NCDOT which illustrate a small decrease in the numbers of vessels passing through the bridge during the spring, summer, and fall over the past year. Most vessels transiting the area in the spring and fall are operated by owners commonly referred to as ''snowbirds''. Owners of these transitory recreational vessels are either traveling north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring which can result in frequent bridge openings due to increased vessel numbers. During the spring and fall months, the flow of recreational vessels is constant.

There were approximately 10,461 and 11,429 vessel passages occurring in 2006 and 2005, respectively, over an eight-month period (during the peak boating season from April to November) according to records furnished by the NCDOT. (See Table A)

TABLE A

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
Bridge Openings for 2006											
233	191	307	392	436	394	451	392	349	386	326	317
Boat Passages for 2006											
273	157	463	1207	1659	1538	1486	1024	921	1234	1392	481
Bridge Openings for 2005											
218	165	313	322	441	439	474	413	327	393	331	297

TABLE A—Continued

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
Boat Passages for 2005											
294	211	532	1041	1767	1438	1639	1152	834	1302	2256	538

Based on the above information, we have proposed to change the regulations that govern the S.R. 1172 Bridge in regards to pleasure vessels to open on the hour on signal between 7 a.m. and 9 p.m., year-round. At all other times, the draw shall open on demand. The proposal will facilitate pleasure vessels in navigating the Atlantic Intracoastal Waterway, while also helping to ease vehicular traffic congestion. The bridge will continue to open on signal at any time for commercial vessels.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.821, by revising paragraph (a)(5) for pleasure vessels to read ''shall open on the hour on signal from 7 a.m. to 9 p.m.''

Regulatory Evaluation

This proposed 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 is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. However, comments on this section will be considered before the final rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.821, paragraph (a)(5) is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

* * * * *

(a) * * *

(5) S.R. 1172 Bridge, mile 337.9, at Sunset Beach, NC, shall open on the hour on signal between 7 a.m. to 9 p.m.

* * * * *

Dated: April 9, 2007.

L.L. Hereth,

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

[FR Doc. E7–8723 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0347; FRL–8309–6]

Approval And Promulgation of Implementation Plans; Iowa; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Iowa State Implementation Plan (SIP) submitted on August 15, 2006. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR) promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA is proposing to determine that the SIP revision fully implements the CAIR requirements for Iowa. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (FIPs) concerning SO_2, NO_X annual, NO_X ozone season emissions for Iowa. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to, and interfere with maintenance of, the national ambient air quality standards for fine particulates and/or ozone in any downwind state. CAIR establishes State budgets for SO_2 and NO_X and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is proposing to approve, Iowa would meet CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions.

DATES: Comments must be received on or before June 7, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0347, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: jay.michael@epa.gov.*
3. *Mail:* Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. 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 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0347. 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.regulations.gov*, 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 *http://www.regulations.gov* or e-mail,

information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.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 and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. 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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this proposal, please contact Michael Jay at (913) 551–7460 or by e-mail at *jay.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What Action Is EPA Proposing to Take?

EPA is proposing to approve a revision to Iowa's SIP submitted on August 15, 2006. In its SIP revision, Iowa would meet CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions, as finalized in the Iowa Administrative Bulletin on June 7, 2006 (567–20.1(455B,17A), 21.1(4), and Chapter 34). Iowa's regulations adopt by reference most of the provisions of EPA's SO_2, NO_X annual, and NO_X ozone season model trading rules, with certain changes discussed below. EPA is proposing to determine that the SIP as revised will meet the applicable requirements of CAIR. Any final action approving the SIP will be taken by the Regional Administrator for Region 7. If EPA approves this revision, the Administrator of EPA will also issue a final rule to withdraw the FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Iowa. This action would delete and reserve 40 CFR 52.840 and 40 CFR 52.841, relating to the CAIR FIP obligations for Iowa. The withdrawal of the CAIR FIPs for Iowa is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Iowa. Once a SIP is fully approved, EPA no longer has authority for the FIPs. Thus, EPA will not have the option of maintaining the FIPs following full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

II. What Is the Regulatory History of CAIR and the CAIR FIPs?

The Clean Air Interstate Rule (CAIR) was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1 to September 30). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These 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 CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

Iowa submitted its SIP in response to EPA's section 110(a)(2)(D) finding, which EPA approved in a rule published March 8, 2007 (72 FR 10380). In that rule, EPA stated that Iowa had met its obligation with regard to interstate transport by adoption of the CAIR model rule. EPA also stated that it would review and act on Iowa's CAIR rule in a separate rulemaking. This document proposes action on Iowa's CAIR rule as explained below.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR

FIPs require EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to effectively create a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO_X allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to: (1) Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program; (2) provide for State allocation of NO_X annual or ozone season allowances using a methodology chosen by the State; (3) provide for State allocation of NO_X annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or (4) allow units that are not otherwise CAIR units to opt individually into the CAIR SO_2, NO_X annual, or NO_X ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' SO_2, NO_X annual, or NO_X ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions.

V. Analysis of Iowa's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

In this action, EPA is proposing approval of Iowa's SIP revision that adopts the budgets established for the State in CAIR, i.e., 32,692 (2009–2014) and 27,243 (2015-thereafter) tons for NO_X annual emissions, 14,263 (2009–2014) and 11,886 (2015-thereafter) tons for NO_X ozone season emissions, and 64,095 (2010–2014) and 44,866 (2015-thereafter) tons for SO_2 emissions. Iowa's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

Iowa has committed to revising a definition in all three CAIR rules in order to fully ensure allowances can be traded among all sources participating in the EPA-administered cap-and-trade programs as intended. EPA discovered after review of other States' rules, but after Iowa had adopted its CAIR rules, that there was an issue related to the definition of ''permitting authority'' when it is revised to refer to a specific State's permitting authority.

In each of Iowa's rules for CAIR, the EPA model trading rules were revised to limit all references to ''permitting authority'' to refer to the Iowa Department of Natural Resources. This

change is acceptable in most, but not all, instances under the current model rules. In certain definitions in the model rules incorporated by Iowa (i.e., ''allocate'' or ''allocation,'' ''CAIR NO_X allowance,'' ''CAIR SO_2 allowance,'' and ''CAIR NO_X Ozone Season allowance''), it is important that the term ''permitting authority'' cover permitting authorities in all States that choose to participate in the respective EPA-administered trading programs. This is necessary to ensure that all allowances issued in each EPA-administered trading program are fungible and can be traded and used for compliance with the allowance-holding requirement in any State in the program.

On February 17, 2007, EPA provided a letter to Iowa that requested and outlined necessary definition revisions. EPA received a letter from Iowa on February 28, 2007, that provided a commitment to make the EPA suggested rule revisions as soon as is practicable upon publication of the final rule concerning the proposed Clean Air Mercury Rule (CAMR) Federal plan. On April 11, 2007, EPA received an electronic correspondence from Iowa stating that Iowa will, in any event, complete these rule revisions before January 1, 2008. The State will be able to simultaneously revise the ''permitting authority'' definition in all cap-and-trade rules for both CAIR and CAMR, and properly update the State's rule as necessary to meet the requirements of the EPA-administered cap-and-trade-program for mercury.

The final rule concerning the CAMR Federal plan is expected to be published before the earliest, major deadline for compliance with requirements for source owners and operators under the CAIR trading programs, i.e., the January 1, 2008, deadline for emissions monitoring requirements under the CAIR Annual Trading Program. EPA expects that, by timing adoption of the EPA requested rule revisions to be soon after the publication of the final rule concerning the CAMR Federal plan, the State will ensure the revisions to the definition of ''permitting authority'' will be completed prior to any of the major compliance deadlines for source owners and operators under the CAIR trading programs. In the event the final rule concerning the CAMR Federal plan is not published in the expected timeframe, the State will need to ensure the necessary State rule revisions are completed and submitted to EPA in advance of the January 1, 2008, monitoring deadline for the CAIR NO_X Annual Trading Program.

To be clear, EPA notes that it is not proposing to approve the State's rule to comply with CAMR as part of this rulemaking. EPA will propose a separate rulemaking for the Iowa rule relating to CAMR.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone season model rules are similar, there are some differences. For example, the NO_X annual model rule (but not the NO_X ozone season model rule) provides for a compliance supplement pool (CSP), which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season model rule reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.36 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than State implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In the SIP revision, Iowa has chosen to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Iowa has adopted a full SIP revision that adopts, with the changes discussed above and with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO_2, NO_X annual, and NO_X ozone season emissions.

C. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to: (1) The cost to recipients of the allowances, which may be distributed for free or auctioned; (2) the frequency of allocations; (3) the basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and (4) the use of allowance set-asides and, if used, their size.

Iowa has chosen to adopt the essential components of the CAIR NO_X annual and CAIR NO_X ozone season model trading rules concerning the allocation of allowances with two notable exceptions. Language is provided in Iowa's rules that attempts to clarify that allowances will be allocated in future years only ''to meet the minimum timing requirements'' specified in the Federal regulations. EPA understands that the language is intended to mean that allocations will be determined by

the dates and only for the years identified or described in 40 CFR 96.141 and 40 CFR 96.341. Additionally, Iowa's CAIR NO_X Annual and CAIR NO_X ozone rules establish permanent allocations for specified units designated as ''existing units'' or ''new units'' and do not include provisions of the EPA's model rules that call for adjusting the allocations for existing units to provide allocations for future, new units. EPA is proposing to approve these changes to the model rule provisions because the changes are consistent with the flexibility that CAIR provides States with regard to allocation methodologies.

D. Allocation of NO_X Allowances From Compliance Supplement Pool

The CAIR establishes a compliance supplement pool to provide an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO_X model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

Iowa has not chosen to modify the provisions of the CAIR NO_X annual model trading rule concerning the allocation of allowances from the CSP. Iowa has chosen to distribute CSP allowances using the allocation methodology provided in 40 CFR 96.143 and has adopted this section by reference.

E. Individual Opt-in Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Iowa has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR trading programs by adopting by reference the entirety of EPA's model rule provisions for opt-in units in the CAIR SO_2, CAIR NO_X annual, and CAIR NO_X ozone season trading programs.

VI. Proposed Actions

EPA is proposing to approve Iowa's full CAIR SIP revision submitted on August 15, 2006. Under this SIP revision, Iowa is choosing to participate in the EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. EPA believes that the SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. EPA is proposing to determine that the SIP as revised will meet the requirements of CAIR. If EPA finalizes this action as proposed, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Iowa. The Administrator's action would delete and reserve 40 CFR 52.840 and 40 CFR 52.841.

VII. 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 proposes to approve State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule would 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 action proposes to approve pre-existing requirements under State law and would 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 proposal also does not have tribal implications because it would 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 proposed action also does not have Federalism implications because 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard and will result, as a consequence of that approval, in the Administrator's withdrawal of the CAIR FIP. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule would 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, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 30, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–8665 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0827; FRL–8303–1]

Revisions to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). This revision concerns particulate matter (PM–10) emissions from open burning. We are proposing approval of a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 7, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0827, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver*: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local MCESD Rule 314. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 23, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–8691 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0249; FRL–8310–5]

Approval and Promulgation of Implementation Plans; Missouri; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a revision to the Missouri State Implementation Plan (SIP) for the purpose of approving the Missouri Department of Natural Resources' (MDNR) actions to address requirements of section 110(a)(2)(D)(i) of the Clean Air Act. Section 110(a)(2)(D)(i) requires each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. MDNR has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, interference with plans in another state to prevent significant deterioration of air quality, and interference with efforts of other states to protect visibility. The requirements for public notification were also met by MDNR.

DATES: Comments on this proposed action must be received in writing by June 7, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0249 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: hamilton.heather@epa.gov.*
3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier.* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas

66101. 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 a.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule that is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov*.

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

Dated: April 30, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–8775 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0677b; FRL–8303–3]

Revisions to the Nevada State Implementation Plan, Washoe County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Washoe County portion of the Nevada State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from fugitive dust sources, such as open areas, unpaved roads, and construction activities. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 7, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0677b, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses Washoe County Regulation 040.030–Dust Control. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this 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.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 29, 2007.

Enrique Manzanilla,

Acting Regional Administrator, Region IX.

[FR Doc. E7–8694 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2006–0862; FRL–8310–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Tioga County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Tioga County ozone nonattainment area (Tioga Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for Tioga Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance

plan for Tioga Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Tioga Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Tioga Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, PADEP submitted a 2002 base year inventory for the Tioga Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Tioga Area maintenance plan for purposes of transportation conformity, which EPA is also proposing to approve. EPA is proposing approval of the redesignation request, and the maintenance plan and the 2002 base year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before June 7, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0862 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: miller.linda@epa.gov*.

C. *Mail:* EPA–R03–OAR–2006–0862, Linda Miller, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

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I. What Are the Actions EPA Is Proposing to Take?

On September 28, 2006, PADEP formally submitted a request to redesignate the Tioga Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, on September 28, 2006, PADEP submitted a maintenance plan for the Tioga Area as a SIP revision to ensure continued attainment for at least 10 years after redesignation. PADEP also submitted a 2002 base year inventory as a SIP revision on September 28, 2006 and a supplement submittal on November 14, 2006. The Tioga Area is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Tioga Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Tioga Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Tioga Area maintenance plan as a SIP revision, such approval being one of the CAA criteria for redesignation to attainment status. The maintenance plan is designed to ensure continued attainment in the Tioga Area for the next ten years. EPA is also proposing to approve the 2002 base year inventory for the Tioga Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Tioga Area maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA

designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Tioga Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Tioga Area (as well as most other areas of the country) effective June 15, 2005. *See*, 40 CFR 50.9(b); 69 FR at 23966 (April 30, 2004); 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard, (69 FR 23951, April 30, 2004), See, *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006) (hereafter ''*South Coast.*''). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under subpart 1 in lieu of subpart 2 of Title I, Part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) the certain conformity requirements for certain types of federal actions. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI.B. ''The Tioga Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has Fully Approved SIP under Section 110(k) of the CAA,'' EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the Tioga Area to attainment of the 8-hour ozone NAAQS.

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, Tioga Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and therefore, is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data from the 3-year period of 2003–2005 indicates that the Tioga Area has a design value of 0.081 ppm. Therefore, the ambient ozone data for the Tioga Area indicates no violations of the 8-hour ozone standard.

B. The Tioga Area

The Tioga Area consists of Tioga County, Pennsylvania. Prior to its designation as an 8-hour ozone nonattainment area, Tioga Area was an attainment/unclassifiable area for the 1-hour ozone nonattainment NAAQS. *See* 56 FR 56694 (November 6, 1991).

On September 28, 2006, PADEP requested that the Tioga Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Tioga Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief,

Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

• ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

• ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

• ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;

• ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

• ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

• Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;

• ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

• ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On September 28, 2006, PADEP requested redesignation of the Tioga Area to attainment for the 8-hour ozone standard. On September 28, 2006, PADEP submitted a maintenance plan for the Tioga Area as a SIP revision to assure continued attainment at least 10 years after redesignation. EPA has determined that the Tioga Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E). PADEP also submitted a 2002 base year inventory concurrently with its maintenance plan as a SIP revision and supplemented on November 14, 2006.

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the Tioga Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Tioga Area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Year	NO_X	VOC
2004	4.8	3.0
2009	3.4	2.2
2018	1.6	1.3

VI. What is EPA's Analysis of the State's Request?

EPA is proposing to determine that Tioga Area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how PADEP's September 28, 2006 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Tioga Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Tioga Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Tioga Area, there is one monitor that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania submitted ozone monitoring data for the years 2003–2005 (the most recent three years of data available as of the time of the redesignation request) for the Tioga Area. This data has been quality assured and is recorded in AQS. The fourth-high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2.

TABLE 2.—TIOGA COUNTY NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; TIOGA COUNTY MONITOR, AQS ID 42–117–4000

Year	Annual 4th High Reading (ppm)
2003	0.084
2004	0.079
2005	0.080
The average for the 3-year period 2003 through 2005 is 0.081 ppm	

The air quality data for 2003–2005 show that the Tioga Area has attained the standard with a design value of 0.081 ppm. The data collected at the Tioga Area monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. PADEP's request for redesignation for the Tioga Area indicates that the data was quality assured in accordance with 40 CFR part 58. PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that Tioga Area has attained the 8-hour ozone NAAQS.

B. The Tioga Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the Tioga Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. *See also,* Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). *See also*, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This action also sets forth EPA's views on the potential effect of the Court's ruling in *South Coast* on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Tioga Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See*, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also*, the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 50399, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the Pennsylvania SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Pennsylvania has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 1-Hour and 8-Hour Standards

The Tioga Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, because the Tioga Area was designated unclassifiable/attainment under the 1-hour standard, and was never designated nonattainment for the 1-hour standard, there are no outstanding 1-hour nonattainment area requirements it would be required to meet. Thus, we find that the Court's ruling does not result in any additional 1-hour requirements for purposes of redesignation.

With respect to the 8-hour standard, EPA notes that the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

At the time the redesignation request was submitted, the Tioga Area was classified under subpart 1 and was obligated to meet subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also*, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004) (which upheld this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit recognized the inequity in such retroactive rulemaking. *See*, *Sierra Club* v. *Whitman*, 285 F. 3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plan in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of resedignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to the 8-hour standard, EPA proposes to determine that Pennsylvania's SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request for the Tioga Area. Because the Commonwealth submitted a complete redesignation request for the Tioga Area prior to the deadline for any submissions required under the 8-hour standard, we have determined that the Part D requirements do not apply to the Tioga Area for the purposes of redesignation.

In addition to the fact that no Part D requirements applicable under the 8-hour standard became due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements of Part D as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See*, *Wall* v. *EPA*, 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also*, 60 FR 62748 (December 7, 1995).

In the case of the Tioga Area, EPA has also determined that before being redesignated, the Tioga Area need not comply with the requirement that a NSR program be approved prior to redesignation. The Part D NSR SIP revision does not come due until June 15, 2007, *see,* 70 FR 71683, November 29, 2005, and thus is not an applicable requirement with respect to redesignation. Additionally, Pennsylvania's preconstruction permitting program regulations in Chapter 127.200–217 of the Pennsylvania Code (approved into the SIP at 40 CFR 52.2020(c)), apply only to ozone nonattainment area sources that are located in areas classified as marginal or worse, *i.e.*, to subpart 2 nonattainment areas. Pennsylvania's NSR regulations do not apply to sources in nonattainment areas classified as basic nonattainment under subpart 1. Consequently, sources in the Tioga Area are subject to Part D NSR requirements of Appendix S to 40 CFR part 51, pursuant to 40 CFR 52.24(k). Appendix S of 40 CFR part 51 contains the preconstruction permitting program that applies to major stationary sources in nonattainment areas lacking an approved Part D NSR program. Appendix S applies during the interim period after EPA designates an area as nonattainment, but before EPA approves revisions to a SIP to implement the Part D NSR requirements for that pollutant. *See*, 70 FR 71618 (November 29, 2005). The Chapter 127 Part D NSR regulations in the Pennsylvania SIP explicitly apply to attainment areas within the Ozone Transport Region (OTR). *See*, Chapter 127 in 40 CFR 52.2020(c)(1); *See*, 66 FR 53094, October 19, 2001. Therefore, after the Tioga Area is redesignated to attainment, sources in the Tioga Area will be subject to Part D NSR applicable under the permitting regulations in

Chapter 127, because the Tioga Area is located in the OTR.

All areas in the OTR, both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure.

In the case of Tioga Area, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation. On October 19, 2001 (66 FR 53094), EPA fully approved the 1-hour Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Tioga Area. The Chapter 127 Part D NSR regulations in the Pennsylvania SIP explicitly apply the requirements for NSR of section 184 of the CAA to attainment areas within the OTR.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the Tioga Area by virtue of the area's designation and classification. Rather, section 184 measures are required in the Tioga Area because it is located in the OTR. *See*, 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997).

3. The Tioga Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998),; *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See also,* 68 FR at 25425 (May 12, 2003) and citations therein.

The Tioga Area was a 1-hour attainment/unclassifiable area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). Because the Tioga Area was a 1-hour attainment/unclassifiable area, there are no previous Part D SIP submittal requirements. Also, no Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of the Tioga Area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the Tioga Area, and therefore they need not be approved into the SIP prior to redesignation.

C. The Air Quality Improvement in the Tioga Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Tioga Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN TONS PER DAY (TPD)

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	0.6	2.7	2.1	3.4	8.8
Year 2004	0.6	2.7	2.2	3.0	8.5
Diff. (02–04)	0.0	0.0	0.1	−0.4	−0.3
Nitrogen Oxides (NO_X)					
Year 2002	1.9	0.3	1.5	5.4	9.1
Year 2004	2.0	0.3	1.5	4.8	8.6
Diff. (02–04)	0.1	0.0	0.0	−0.6	−0.5

Between 2002 and 2004, VOC emissions were reduced by 0.3 tpd, and NO_X emissions were reduced by 0.5 tpd. These reductions and anticipated future reductions are due to the following permanent and enforceable measures implemented or in the process of being implemented in the Tioga Area:

1. Stationary Point Sources
   Federal NO_X SIP Call (66 FR 43795, August 21, 2001)
2. Stationary Area Sources
   Solvent Cleaning (68 FR 2206, January 16, 2003)
   Portable Fuel Containers (69 FR 70893, December 8, 2004)
3. Highway Vehicle Sources
   Federal Motor Vehicle Control Programs (FMVCP)
   —Tier 1 (56 FR 25724, June 5, 1991)
   —Tier 2 (65 FR 6698, February 10, 2000)
   Heavy Duty Engines and Vehicles Standards (62 FR 54694, October 21, 1997 and 65 FR 59896, October 6, 2000)
   National Low Emission Vehicle (NLEV) (64 FR 72564, December 28, 1999)
   Vehicle Safety Inspection Program (70 FR 58313, October 6, 2005)
4. Nonroad Sources
   Nonroad Diesel Engine and Fuel (69 FR 38958, June 29, 2004)

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

D. The Tioga Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Tioga Area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Tioga Area for at least 10 years after redesignation. Pennsylvania is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the CAA. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Tioga Area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required In A Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memo provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(1) An attainment emissions inventory;

(2) A maintenance demonstration;

(3) A monitoring network;

(4) Verification of continued attainment; and

(5) A contingency plan.

Analysis of the Tioga Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the Tioga Area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date. The 2004 inventory is consistent with EPA guidance and is based on actual ''typical summer day'' emissions of VOC and NO_X during 2004 and consists of a list of sources and their associated emissions.

PADEP prepared comprehensive VOC and NO_X emissions inventories for the Tioga Area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO_X and VOC base year emissions inventories, PADEP used the following approaches and sources of data:

(i) *Point source emissions*—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA's publication series AP–42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) *Area source emissions*—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP–42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) *On-road mobile sources*—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission model, MOBILE 6.2, to estimate highway vehicle emissions. The Tioga Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicles miles traveled (VMT) by vehicle type and roadway type.

(iv) *Mobile nonroad emissions*—The 2002 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2002 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. There are no commercial aircraft operations in the Tioga Area. For 2002 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from *http://www.airnav.com,* and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

The 2004 attainment year VOC and NO_X emissions for the Tioga Area are summarized along with the 2009 and 2018 projected emissions for this area in Tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that Pennsylvania has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On September 28, 2006, PADEP submitted a SIP revision to supplement its September 28, 2006 redesignation request. The submittal by PADEP consists of the maintenance plan as required by section 175A of the CAA. The Tioga Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the Tioga Area through the year 2018. A maintenance demonstration need not be based on modeling. *See, Wall* v. *EPA, supra*; *Sierra Club* v. *EPA, supra. See also,* 66 FR at 53099–53100; 68 FR at 25430–32.

Tables 4 and 5 specify the VOC and NO_X emissions for the Tioga Area for 2004, 2009, and 2018. PADEP chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPD)

Source category	2004 VOC emissions	2009 VOC emissions	2018 VOC emissions
Mobile*	3.0	2.2	1.3
Nonroad	1.5	1.36	1.0
Area	2.7	2.4	2.6
Point	0.6	0.5	0.6
Total	8.4	7.1	6.0

*Includes safety margin identified in the motor vehicle emission budgets for transportation conformity.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2018 (TPD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2018 NO_X emissions
Mobile*	4.8	1.3	1.6
Nonroad	1.5	1.3	0.8
Area	0.3	0.3	0.3
Point	2.0	2.1	2.6
Total	8.5	7.1	5.3

*Includes safety margin identified in the motor vehicle emission budgets for transportation conformity.

The following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

1. Pennsylvania's Portable Fuel Containers (69 FR 70893, December 8, 2004)
2. Pennsylvania's Consumer Products (69 FR 70895, December 8, 2004)
3. Pennsylvania's Architectural and Industrial Maintenance (AIM) Coatings (69 FR 68080, November 23, 2004)
4. Federal NO_X SIP Call (66 FR 43795, August 21, 2001)
5. Federal Clean Air Interstate Rule (71 FR 25328, April 28, 2006)
6. FMVCP for passenger vehicles and light-duty trucks and cleaner gasoline (2009 and 2018 fleet)—Tier 1 and Tier 2 (56 FR 25724, June 5, 1991 and 65 FR 6698, February 10, 2000)
7. NLEV Program, which includes the Pennsylvania's Clean Vehicle Program for passenger vehicles and light-duty trucks (69 FR 72564, December 28, 1999)—proposed amendments to move the implementation to model year (MY) 2008
8. Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006) (66 FR 5002, January 18, 2001)
9. Non-road emissions standards (2008) and off-road diesel fuel (2007/2010) (69 FR 38958, June 29, 2004)

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Tioga Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Tioga Area. Pennsylvania will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The Commonwealth will track the attainment status of the ozone NAAQS in the Tioga Area by reviewing air quality and emissions during the maintenance period. The Commonwealth will perform an annual evaluation of two key factors, vehicle miles traveled (VMT) data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) to see if the area exceeds the attainment year inventory (2004) by more than 10 percent. Based on these evaluations, the Commonwealth will consider whether any further emission control measures should be implemented.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Tioga Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest eight-hour ozone concentrations at the Tioga Area monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measure that have been adopted but not yet implemented at the time of excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will be considered in the event that a violation of the 8-hour ozone standard occurs at the Tioga County, Pennsylvania

monitor. In the event of a violation of the 8-hour ozone standard, contingency measures will be adopted in order to return the area to attainment with the standard. Contingency measures to be considered for the Tioga Area will include, but not limited to the following:

Non-Regulatory Measures

—Voluntary diesel engine ''chip reflash''—installation software to correct the defeat device option on certain heavy duty diesel engines
—Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local onroad or offroad fleets
—Idling reduction technology for Class 2 yard locomotives
—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities
—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment
—Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use

Regulatory Measures

—Additional controls on consumer products
—Additional control on portable fuel containers

The plan lays out a process to have any regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement the non-regulatory contingency measures within 12–24 months of the trigger.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Tioga Area Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. Pursuant to 40 CFR part 93 and § 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBs for the Tioga Area are listed in Table 1 of this document for the 2004, 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The Tioga Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Tioga Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 7.7 tpd of VOC and 8.0 tpd of NO_X. PADEP projected emissions out to the year 2018 and projected a total of 5.5 tpd of VOC and 4.1 tpd of NO_X from all sources in the Tioga Area. The safety margin for Tioga for 2018 would be the difference between these amounts, or 2.2 tpd of VOC and 3.9 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE TIOGA AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	7.7	8.0

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE TIOGA AREA—Continued

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 Interim	6.7	6.2
2009 Safety Margin	1.0	1.8
2004 Attainment	7.7	8.0
2018 Final	5.5	4.1
2018 Safety Margin	2.2	3.9

PADEP allocated 0.2 tpd NO_X and 0.1 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 0.2 tpd NO_X and 0.2 tpd VOC from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBs for the Tioga Area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE TIOGA AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 projected on-road mobile source projected emissions	2.1	3.2
2009 Safety Margin Allocated to MVEBs	0.1	0.2
2009 MVEBs	2.2	3.4
2018 projected on-road mobile source projected emissions	1.1	1.4
2018 Safety Margin Allocated to MVEBs	0.2	0.2
2018 MVEBs	1.3	1.6

C. Why Are the MVEBs Approvable?

The 2004, 2009 and 2018 MVEBs for the Tioga Area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Tioga Area Maintenance Plan?

The MVEBs for the Tioga Area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Tioga Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Tioga Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov.otaq/stateresources/transconf/index.htm* (once there, click on ''Adequacy Review of SIP Submissions'').

VIII. Proposed Actions

EPA is proposing to determine that the Tioga Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the Commonwealth's September 28, 2006 request for the Tioga Area to be redesignated to attainment of the 8-hour NAAQS for ozone. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Tioga Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan and the 2002 base year inventory for Tioga Area, submitted on September 28, 2006 and supplemented on November 14, 2006, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Tioga Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by Pennsylvania for the Tioga Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation

of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have 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), nor will it 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 proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule proposing to approve the redesignation of the Tioga Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, 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

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen Oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: April 26, 2007.

Judith Katz,

Acting Regional Administrator, Region III.

[FR Doc. E7–8669 Filed 5–7–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0715; FRL–8310–9]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Clark and Floyd Counties 8-Hour Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 15, 2006, the Indiana Department of Environmental Management (IDEM) submitted a request to redesignate the Indiana portion of the Louisville 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area (Clark and Floyd Counties) to attainment for the 8-hour ozone NAAQS, and a request for EPA approval of a 14-year maintenance plan for Clark and Floyd Counties. Today, EPA is making a determination that the Indiana portion of the Louisville 8-hour ozone nonattainment area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is proposing to approve the request to redesignate Clark and Floyd Counties to attainment of the 8-hour ozone standard based on its determination that the Louisville 8-hour ozone nonattainment area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is also proposing to approve Indiana's maintenance plan which adequately supports continued attainment through 2020 and, for purposes of transportation conformity, the Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the year 2003 and 2020.

DATES: Comments must be received on or before June 7, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0715, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
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- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. This supplementary information section is arranged as follow:

I. What Action Is EPA Proposing to Take?
II. What Is the Background for This Action?
III. What Are the Criteria for Redesignation to Attainment?
IV. What Are EPA's Analyses of the State's Redesignation Request and What Are the Bases for EPA's Proposed Action?
V. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 14-Year Maintenance Plan Which Can Be Used To Support Conformity Determinations?
VI. What Is the Effect of EPA's Proposed Action?
VII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing to Take?

We are proposing to take several related actions for the Indiana portion of the Louisville 8-hour nonattainment area (Clark and Floyd Counties). First, we are proposing to determine that Clark and Floyd Counties have attained the 8-hour ozone NAAQS based on air quality for the period of 2003 through 2005. Second, we are proposing to approve Indiana's ozone maintenance plan for Clark and Floyd Counties as a revision of the Indiana SIP. The maintenance plan is designed to keep Clark and Floyd Counties in attainment of the 8-hour ozone standard through 2020 by ensuring that the VOC and NO_X emissions in both Clark and Floyd Counties and the entire Louisville area will be lower in 2020 than in 2003, an attainment year. As supported by and consistent with the ozone maintenance plan, we are also proposing to approve the 2003 and the 2020 VOC and NO_X MVEBs for the Louisville area for transportation conformity purposes. We are also proposing to approve the request from the State of Indiana to change the designation of Clark and Floyd Counties from nonattainment to attainment of the 8-hour ozone NAAQS. We have determined that Indiana and Clark and Floyd Counties have met the requirements for redesignation to attainment under section 107(d)(3)(E) of the Clean Air Act (CAA).

II. What Is the Background for This Action?

A. General Background Information

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)) (62 FR 38856).[1] This 8-hour ozone standard replaced a prior 1-hour ozone NAAQS, which had been promulgated on February 8, 1979 (44 FR 8202), and which was revoked on June 15, 2005 (69 FR 23858).

Ground-level ozone is not emitted directly by sources. Rather, emitted NO_X and VOC react in the presence of sunlight to form ground-level ozone along with other secondary compounds. NO_X and VOC are referred to as ''ozone precursors.'' Control of ground-level ozone concentrations is achieved through controlling VOC and NO_X emissions.

The CAA required EPA to designate as nonattainment any area that violated the 8-hour ozone NAAQS. The **Federal Register** notice promulgating these designations and classifications was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas. Both are found in title I, part D of the CAA. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas for any pollutant governed by a NAAQS. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA.

In the April 30, 2004, designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment (''basic'' nonattainment) and subpart 2 nonattainment (''classified'' nonattainment). EPA based this division on the area's 8-hour ozone design values (i.e., on the three-year averages of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the areas) and on their 1-hour ozone design values (i.e., on the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the areas).[2] EPA classified 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb as

[1] This standard is violated in an area when any ozone monitor in the area (or in its impacted downwind environs) records 8-hour ozone concentrations with an average of the annual fourth-highest daily maximum 8-hour ozone concentrations over a three-year period equaling or exceeding 85 ppb. 40 CFR 50.10.

[2] The 8-hour ozone design value and the 1-hour ozone design value for each area were not necessarily recorded at the same monitoring site. The worst-case monitoring site for each ozone concentration averaging time was considered for each area.

subpart 2, classified nonattainment areas. EPA classified all other 8-hour nonattainment areas as subpart 1, basic nonattainment areas. The basis for area classification was explained in a separate April 30, 2004 final rule (the Phase 1 implementation rule) (69 FR 23951).

Emission control requirements for classified nonattainment areas are linked to area classifications. Areas with more serious ozone pollution problems are subject to more prescribed requirements and later attainment dates. The prescribed emission control requirements are designed to bring areas into attainment by their specified attainment dates.

In the April 30, 2004 ozone designation/classification rulemaking, EPA designated the Louisville nonattainment area, including Clark and Floyd Counties as a subpart 1 basic nonattainment area for the 8-hour ozone NAAQS. EPA based the designation on ozone data collected during the 2001–2003 period.

On November 15, 2006, the State of Indiana requested redesignation of Clark and Floyd Counties to attainment of the 8-hour ozone NAAQS based on ozone data collected in these counties from 2003–2005.

B. What Is the Impact of the December 22, 2006 United States Court of Appeals Decision Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under Subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9)of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain conformity requirements for certain types of Federal actions. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions.

This section sets forth EPA's views on the potential effect of the Court's ruling on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under Subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under Subpart 2. Although any future decision by EPA to classify this area under Subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating State submissions in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any future requirements.

First, at the time the redesignation request was submitted, Clark and Floyd Counties (and the entire Louisville area) were classified under Subpart 1 and were obligated to meet Subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division) See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). See *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, *e.g.* also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking, See *Sierra Club* v. *Whitman*, 285 F.3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under Subpart 2 that were not in effect at the time it submitted its redesignation request.

3. Requirements Under the 1-Hour Standard

With respect to the requirements under the 1-hour standard, Clark and Floyd Counties were attainment areas subject to a Clean Air Act section 175A maintenance plan under the 1-hour standard. The Court's ruling does not impact redesignation requests for these types of areas.

First, there are no conformity requirements that are relevant for redesignation requests for any standard, including the requirement to submit a transportation conformity SIP [3]. Under longstanding EPA policy, EPA believes that it is reasonable to interpret the conformity SIP requirement as not applying for purposes of evaluating a redesignation request under section

[3] Clean Air Act section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. 40 CFR 51.390. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995) (Tampa, FL redesignation). Federal transportation conformity regulations apply in all States prior to approval of transportation conformity SIPs. The 1-hour ozone areas in Indiana were redesignated to attainment without approved State transportation conformity regulations because the Federal regulations were in effect in Indiana. When challenged, these 1-hour ozone redesignations, which were approved without State regulations, were upheld by the courts. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida). Although Indiana does not have approved State transportation conformity regulations, it has developed memoranda of understanding, signed by all parties involved in conformity, to address conformity consultation procedures. The Federal transportation conformity regulations, which apply in Indiana, require the approved 1-hour ozone budgets to be used for transportation conformity purposes prior to 8-hour ozone budgets being approved.

Second, with respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, Clark and Floyd Counties are attainment areas subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in *South Coast* should not alter requirements that would preclude EPA from finalizing the redesignation of this area.

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved an applicable state implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). The two main policy guidelines affecting the review of ozone redesignation requests are the following: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (September 4, 1992 Calcagni memorandum); and, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995. For additional policy guidelines used in the review of ozone redesignation requests, see our proposed rule for the redesignation of the Evansville, Indiana ozone nonattainment area at 70 FR 53606 (September 9, 2005).

IV. What Are EPA's Analyses of the State's Redesignation Request and What Are the Bases for EPA's Proposed Action?

EPA is proposing to: (1) Determine that Clark and Floyd Counties have attained the 8-hour ozone standard; (2) approve the ozone maintenance plan for Clark and Floyd Counties and the VOC and NO_X MVEBs supported by this maintenance plan; and (3) approve the redesignation of Clark and Floyd to attainment of the 8-hour ozone NAAQS. The bases for our proposed determination and approvals follow.

A. Louisville Has Attained the 8-Hour Ozone NAAQS

For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and appendix I, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all ozone monitoring sites in the area and in its nearby downwind environs. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor (the monitoring site's ozone design value) within the area and in its nearby downwind environs over the three-year period must not exceed the ozone standard. Based on an ozone data rounding convention described in 40 CFR part 50, appendix I, the 8-hour standard is attained if the area's ozone design value[4] is 0.084 ppm (84 ppb) or lower. The data must be collected and quality-assured in accordance with 40 CFR part 58, and must be recorded in EPA's Air Quality System (AQS). The ozone monitors generally should have remained at the same locations for the duration of the monitoring period required to demonstrate attainment (for three years or more). The data supporting attainment of the standard must be complete in accordance with 40 CFR part 50, appendix I.

Indiana submitted ozone monitoring data for the April through September ozone seasons from 2003 to 2005 for the Indiana and Kentucky portions of the Louisville nonattainment area. This data has been quality assured by Indiana and Kentucky and is recorded in AQS. The 4th high averages are summarized in Table 1, in which the values are in ppm ozone.

TABLE 1.—4TH HIGH VALUES IN PPM OZONE.

Monitor	County	2003–2005	2003	2004	2005	2006
Charlestown, IN	Clark	0.081	0.090	0.074	0.080	0.079

[4] The worst-case monitoring site-specific ozone design value in the area or in its affected downwind environs.

TABLE 1.—4TH HIGH VALUES IN PPM OZONE.—Continued

Monitor	County	2003–2005	2003	2004	2005	2006
New Albany, IN	Floyd	0.079	0.086	0.071	0.079	0.076
WLKY, KY	Jefferson	0.071	0.073	0.068	0.074	0.067
Watson, KY	Jefferson	0.076	0.075	0.070	0.085	0.077
Bates, KY	Jefferson	0.073	0.072	0.070	0.079	0.074
Shepherdsville, KY	Bulitt	0.073	0.072	0.068	0.080	0.071
Buckner, KY	Oldham	0.082	0.082	0.076	0.089	0.083

These data show that the average fourth-high daily maximum 8-hour ozone concentrations for the monitoring sites in the Louisville area are all below the 85 ppb ozone standard violation cut-off. The data support the conclusion that the Louisville 8-hour ozone nonattainment area (including Clark and Floyd Counties) did not experience a monitored violation of the 8-hour ozone standard from 2003–2005. In addition, the surrounding counties in Indiana and Kentucky did not monitor nonattainment during the 2003–2005 period. As also noted in Table 1, the 8-hour ozone NAAQS continued to be attained in the Louisville area through 2006.

Indiana has committed to continue ozone monitoring at the sites in Clark and Floyd Counties. IDEM also commits to consult with the EPA prior to making any changes in the existing monitoring network. In summary, EPA believes that the data submitted by Indiana provide an adequate demonstration that the Louisville area attains the 8-hour ozone NAAQS.

B. Clark and Floyd Counties Have Met All Applicable Requirements Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Indiana has met all currently applicable SIP requirements for Clark and Floyd Counties under section 110 of the CAA (general SIP requirements). EPA has determined that the Indiana SIP meets currently applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 and subpart 2 ozone nonattainment areas). See section 107(d)(3)(E)(v) of the CAA. In addition, EPA has determined that the Indiana SIP is fully approved with respect to all applicable requirements. See section 107(d)(3)(E)(ii) of the CAA. In making these determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA, those CAA requirements applicable to Clark and Floyd Counties at the time the State submitted the final, complete ozone redesignation request for this area.

1. Clark and Floyd Counties Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992 Calcagni memorandum describes EPA's interpretation of section 107(D)(3)(E) of the CAA. Under this interpretation, to qualify for redesignation of an area to attainment, the State and the area must meet the relevant CAA requirements that come due prior to the State's submittal of a complete redesignation request for the area. See also a September 17, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation, ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992'' and 66 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete redesignation request remain applicable until a redesignation to attainment of the standard is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements: Section 110(a) of title I of the CAA contains the general requirements for a SIP, which include: enforceable emission limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the emission limitations. SIP elements and requirements are specified in section 110(a)(2) of title I, part A of the CAA. These requirements and SIP elements include, but are not limited to, the following: (a) Submittal of a SIP that has been adopted by the State after reasonable public notice and a hearing; (b) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (c) implementation of a source permit program; (d) provisions for the implementation of new source part C requirements (Prevention of Significant Deterioration (PSD)) and new source part D requirements (New Source Review (NSR)); (e) criteria for stationary source emission control measures, monitoring, and reporting; (f) provisions for air quality modeling; and (g) provisions for public and local agency participation.

SIP requirements and elements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in one State from significantly contributing to air quality problems in another State. To implement this provision, EPA required States to establish programs to address transport of air pollutants (NO_X SIP call,

Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) of the CAA to meet the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA (70 FR 21147, April 25, 2005). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's classification. EPA believes that the requirements linked with a particular nonattainment area's classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State.

These requirements should not be construed to be applicable requirements for purposes of redesignation. In addition, the other section 110 elements described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with an area's designation and classification are the relevant measures in evaluating this aspect of a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001). In addition, Indiana's response to the CAIR rule was due in September 2006. Because this deadline had not yet passed when the State submitted the final, complete redesignation request, the State's CAIR submittal is also not an applicable requirement for redesignation purposes.

It should be noted that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, we also note that EPA has previously approved provisions in the Indiana SIP addressing section 110 elements under the 1-hour ozone standard. We have analyzed the Indiana SIP as codified in 40 CFR part 52, subpart P, and have determined that it is consistent with the requirements of section 110(a)(2) of the CAA. The SIP, which has been adopted after reasonable public notice and hearing, contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications of existing sources; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting, and otherwise satisfies the applicable requirements of section 110(a)(2).

Part D SIP requirements: EPA has determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA. Under part D, an area's classification (marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment area plan requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Part D, subpart 1 requirements: For purposes of evaluating this redesignation request, the applicable subpart 1 part D requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and 176. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). (see also 68 FR 4852–4853 regarding a St. Louis ozone redesignation notice of proposed rulemaking for a discussion of section 172 requirements.)

No requirements under part D of the CAA came due for Clark and Floyd Counties prior to the State's November 15, 2006, submittal of a complete redesignation request. For example, the requirement for an ozone attainment demonstration, as contained in section 172(c)(1), was not yet applicable, nor were the requirements for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and attainment plan and RFP contingency measures (section 172(c)(9)). All of these required SIP elements are required for submittal after November 15, 2006. Therefore, none of the part D requirements are applicable to Clark and Floyd Counties for purposes of redesignation.

Section 176 conformity requirements: Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

In addition to the fact that part D requirements did not become due prior to Indiana's submission of the complete ozone redesignation request for Clark and Floyd Counties, and, therefore, are not applicable for redesignation purposes, EPA has similarly concluded that the conformity requirements do not apply for purposes of evaluating the ozone redesignation request under section 107(d) of the CAA. In addition, it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the ozone redesignation request under section 107(d) of the CAA because state conformity rules are still required after redesignation of an area to attainment of a NAAQS and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

We conclude that the State and Clark and Floyd Counties have satisfied all applicable requirements under section 110 and part D of the CAA to the extent that the requirements apply for the purposes of reviewing the State's ozone redesignation request.

2. Clark and Floyd Counties Have a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Indiana SIP for Clark and Floyd Counties under section 110(k) of the CAA for all applicable requirements. EPA may rely on prior SIP approvals in approving a redesignation request (see the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426

(6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Clark and Floyd Counties for purposes of redesignation. No Clark and Floyd County SIP provisions are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of review of the State's redesignation request. EPA has concluded that the section 110 SIP submission approved under the 1-hour standard will be adequate for purposes of attaining and maintaining the 8-hour standard. EPA also believes that since the part D requirements did not become due prior to Indiana's submission of a final, complete redesignation request, they also are not applicable requirements for purposes of redesignation.

C. The Air Quality Improvement in Clark and Floyd Counties Is Due to Permanent and Enforceable Reductions in Emissions From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Emission Reductions

EPA believes that the State of Indiana has demonstrated that implementation of the SIP, Federal measures, and other State-adopted measures have contributed to the observed air quality improvement in Clark and Floyd Counties.

In making this demonstration, the State has documented the changes in VOC and NO_X emissions from anthropogenic (man-made or man-based) sources in Clark and Floyd, as well as the entire Louisville nonattainment area, between 1996 and 2004 and the statewide NO_X emissions from Electric Generating Units (EGUs) from 1999 to 2005. The Louisville area was monitored in violation of the 8-hour ozone NAAQS during the period of 2001–2003 and in attainment with the NAAQS during the period of 2003–2005. The total VOC and NO_X emissions for both Clark and Floyd Counties and the entire Louisville nonattainment area (Louisville NA in the table) for 2002, an attainment year, and 2003, a nonattainment year, are given in Table 2.

TABLE 2.—VOC AND NO_X EMISSIONS IN CLARK & FLOYD COUNTIES AND LOUISVILLE, ALL SOURCES—EMISSIONS IN TONS/SUMMER DAY

Pollutant	2002	2003
VOC—Clark & Floyd	32.69	29.26
NO_X—Clark & Floyd	57.59	51.76
VOC—Louisville NA	138.24	133.83
NO_X—Louisville NA	247.46	238.76

The statewide NO_X emissions for EGUs from 1999–2005 are given in Table 3 below.

TABLE 3.—NO_X EMISSIONS FROM ELECTRIC GENERATING UNITS IN INDIANA STATEWIDE—EMISSIONS IN THOUSANDS OF TONS PER OZONE SEASON

[April–October]

Area	1999	2000	2001	2002	2003	2004	2005
Statewide	149.8	133.9	136.1	114.0	99.3	66.6	55.5

The NO_X and VOC emissions for Clark and Floyd Counties and the entire Louisville nonattainment area have decreased from 2002, an 8-hour standard violation year, to 2003, an 8-hour standard attainment year. In addition, the Indiana Statewide EGU NO_X emissions have continued to decline from 1999 to 2005. This is a result of the implementation of the Indiana NO_X SIP (in response to EPA's NO_X SIP call) and acid rain control regulations, both of which led to permanent, enforceable emission reductions.

VOC and NO_X emissions have declined as a result of enforceable emission reductions. As required by Section 172 of the CAA, Indiana in the mid-1990s promulgated rules requiring RACT for emissions of VOCs. Statewide RACT rules have applied to all new sources locating in Indiana since that time and include the following VOC rules: 326 Indiana Administrative Code (IAC) 8–1–6 (Best Available Control Technology (BACT) for non-specific sources); 326 IAC 8–2 (surface coating emission limitations); 326 IAC 8–3 (organic solvent degreasing operations); 326 IAC 8–4 (petroleum sources); and 326 IAC 8–5 (miscellaneous sources). The VOC emission reductions resulting from the implementation of these VOC emission control rules are permanent and enforceable.

Besides the statewide VOC RACT rules and NO_X emission control requirements, other Federal emission reduction requirements have resulted in decreased ozone precursor emissions in Clark and Floyd Counties (a similar set of control measures have been implemented for the Kentucky portion of the Louisville area) and will produce future emission reductions that will support maintenance of the ozone standard in these Counties. These emission reduction requirements include the following:

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules are being phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will

occur: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent; and larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are also expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Although some of these emission reductions have already occurred by the 2004 attainment year, most of these emission reductions will occur during the maintenance period for Clark and Floyd Counties.

Heavy-Duty Diesel Engines. In July 2000, EPA issued a final rule to control the emissions from highway heavy duty diesel engines, including low-sulfur diesel fuel standards. These emission reductions are being phased in between 2004 and 2007. This rule is expected to result in a 40 percent decrease in NO_X emissions from heavy duty diesel vehicle.

Non-Road Diesel Rule. Issued in May, 2004, this rule generally applies to new stationary diesel engines used in certain industries, including construction, agriculture, and mining. In addition to affecting engine design, this rule includes requirements for cleaner fuels. It is expected to reduce NO_X emissions from these engines by up to 90 percent, and to significantly reduce particulate matter and sulfur emissions from these engines in addition to the NO_X emission reduction. This rule did not affect 2004 emissions from these sources, but will limit emissions from new engines beginning in 2008.

Indiana commits to maintain all existing emission control measures that affect Clark and Floyd Counties after this area is redesignated to attainment of the 8-hour ozone NAAQS. All changes in existing rules affecting Clark and Floyd Counties and new rules subsequently needed to provide for the maintenance of the 8-hour ozone NAAQS in Clark and Floyd Counties will be submitted to the EPA for approval as SIP revisions.

D. Clark and Floyd Counties Have a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Clark and Floyd Counties to attainment of the ozone NAAQS, Indiana submitted a SIP revision request to provide for maintenance of the 8-hour ozone NAAQS in Clark and Floyd Counties for at least 10 years after the redesignation of this area to attainment of the 8-hour ozone NAAQS.

1. What Is Required in an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation from nonattainment to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates maintenance of the standard for 10 years following the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violations. The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the following items: (1) The attainment of VOC and NO_X emissions inventories; (2) a maintenance demonstration showing maintenance for the 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

2. Demonstration of Maintenance

IDEM prepared comprehensive VOC and NO_X emission inventories for Clark and Floyd Counties, including point (significant stationary sources), area (smaller and widely-distributed stationary sources), mobile on-road, and mobile non-road sources for 2003 (the base year/attainment year).

As part of the November 15, 2006, redesignation request submittal, IDEM included a requested revision to the SIP to incorporate a 14-year ozone maintenance plan which is consistent with the requirements under section 175A of the CAA. Included in the maintenance plan is a maintenance demonstration. This demonstration shows maintenance of the 8-hour ozone NAAQS by documenting current and projected VOC and NO_X emissions for both Clark and Floyd Counties and the entire Louisville nonattainment area and by documenting photochemical modeling results that support maintenance of the standard in this area.[5]

Table 4 specifies the VOC emissions in Clark and Floyd Counties and the entire nonattainment area for 2003, 2011 and 2020. IDEM chose 2020 as a projection year to meet the 10-year minimum maintenance projection requirement, allowing several years for the State to complete its adoption of the ozone redesignation request and ozone maintenance plan and for the EPA to approve the redesignation request and maintenance plan. IDEM also chose 2011 as an interim year to demonstrate that VOC and NO_X emissions will remain below the attainment levels throughout the 14-year maintenance period. The mobile source emission projections for 2011 and 2020 exclude VOC reductions associated with Indiana's Clark and Floyd vehicle inspection and maintenance program that was discontinued at the end of 2006. Indiana's termination of its inspection and maintenance program in Clark and Floyd Counties will be the subject of a subsequent **Federal Register** notice.

Table 5, similar to Table 4, specifies the NO_X emissions in Clark and Floyd Counties and the entire nonattainment area for 2003, 2011 and 2020. Together, the information contained in Tables 4 and 5 and the photochemical modeling results demonstrate that Clark and Floyd Counties, and the Louisville nonattainment area, should remain in attainment of the 8-hour ozone NAAQS between 2003 and 2020, which is more than 10 years after EPA is expected to approve the redesignation of these counties to attainment of the 8-hour ozone NAAQS. The mobile source emission projections for 2011 and 2020 exclude NO_X reductions associated with Indiana's Clark and Floyd vehicle inspection and maintenance program that was discontinued at the end of 2006.

[5] The attainment year can be any of the three consecutive years in which the area has clean (below violation level) air quality data (2003, 2004, or 2005 for the Louisville area).

TABLE 4.—ATTAINMENT YEAR (2003) AND PROJECTED VOC EMISSIONS IN CLARK AND FLOYD COUNTIES AND ENTIRE NONATTAINMENT AREA

[Tons per summer day]

Source sector	Year		
	2003	2011	2020
Point:			
Clark and Floyd	4.17	6.61	7.14
Louisville NA	36.62	39.28	39.85
Area:			
Clark and Floyd	11.94	12.77	14.59
Louisville NA	35.07	36.93	40.02
On-Road Mobile:			
Clark and Floyd	9.60	6.12	3.98
Louisville NA	40.97	25.69	16.89
Off-Road Mobile:			
Clark and Floyd	3.55	2.35	2.20
Louisville NA	21.17	15.87	15.28
Total:			
Clark and Floyd	29.26	27.85	27.91
Louisville NA	133.83	117.77	112.04

TABLE 5.—ATTAINMENT YEAR AND PROJECTED NO_X EMISSIONS IN CLARK AND FLOYD COUNTIES AND ENTIRE NONATTAINMENT AREA

[Tons per summer day]

Source sector	Year		
	2003	2011	2020
Point:			
Clark and Floyd	24.26	27.29	28.66
Louisville NA	99.73	78.95	75.97
Area:			
Clark and Floyd	1.60	1.71	1.80
Louisville NA	2.53	2.67	2.79
On-Road Mobile:			
Clark and Floyd	20.27	10.20	4.15
Louisville NA	95.51	47.53	19.62
Off-Road Mobile:			
Clark and Floyd	5.63	4.43	3.49
Louisville NA	41.01	34.77	27.88
Total:			
Clark and Floyd	51.77	43.63	38.10
Louisville NA	238.79	163.92	126.26

IDEM also notes that the State's EGU NO_X emission control rules stemming from EPA's NO_X SIP call, implemented beginning in 2004, and CAIR, which is to be implemented beginning in 2009 will further lower NO_X emissions in upwind areas. This should result in decreased ozone and ozone precursor transport into Clark and Floyd Counties. It will also support maintenance of the ozone standard in Clark and Floyd Counties.

Based upon the data in Table 4, VOC emissions in Clark and Floyd Counties are projected to decline by about 5% between 2003 and 2020 and VOC emissions in the entire nonattainment area are projected to decline by 16%. Based upon the data in Table 5, NO_X emissions in Clark and Floyd Counties are projected to decline by over 26% between 2003 and 2020, and NO_X emissions in the entire nonattainment area are projected to decline by 47%.

Based on the projected VOC and NO_X emission reductions between the attainment year in 2003 and the maintenance year of 2020, for both Clark and Floyd Counties and the entire Louisville nonattainment area, we conclude that IDEM has successfully demonstrated that the 8-hour ozone standard should be maintained in Clark and Floyd Counties, as well as the entire Louisville nonattainment area through 2020. This is reinforced by photochemical modeling done for Clark and Floyd Counties. We believe that this is especially likely given the expected impacts of the NO_X SIP call and CAIR. This conclusion is further supported by the fact that other states in the eastern portion of the United States are expected to further reduce regional NO_X emissions through implementation of their own NO_X emission control rules for EGUs and other NO_X sources and through implementation of CAIR, reducing ozone and NO_X transport into Clark and Floyd Counties and the entire Louisville nonattainment area.

3. Monitoring Network

IDEM commits to continue operating and maintaining an approved ozone monitoring network in Clark and Floyd Counties in accordance with 40 CFR part 58 through the 14-year maintenance period. This will allow the confirmation of the maintenance of the 8-hour ozone standard in this area and the triggering of contingency measures if needed.

4. Verification of Continued Attainment

Continued attainment of the 8-hour ozone NAAQS in Clark and Floyd

Counties depends on the State's efforts toward tracking applicable indicators during the maintenance period. The State's plan for verifying continued attainment of the 8-hour ozone standard in Clark and Floyd Counties consists, in part, of a plan to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. In addition, IDEM will periodically revise and review the VOC and NO_X emissions inventories for these counties to assure that emissions growth is not threatening the continued attainment of the 8-hour ozone standard in this area. Revised emission inventories for this area will be prepared for 2005, 2008, and 2011 as necessary to comply with the emission inventory reporting requirements established in the CAA. The revised emissions will be compared with the 2003 attainment emissions and the 2020 projected maintenance year emissions to assure continued maintenance of the ozone standard.

5. Contingency Plan

The contingency plan provisions of the CAA are designed to result in prompt correction or prevention of violations of the NAAQS that might occur after redesignation of an area to attainment of the NAAQS. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the State will implement all measures with respect to control of the pollutant(s) that were controlled in the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana commits to review its maintenance plan eight years after redesignation and to adopt and expeditiously implement any necessary corrective actions (or contingency measures). Contingency measures to be considered will be selected from a comprehensive list of measures deemed appropriate and effective at the time the selection is made. The contingency plan has two levels of actions/responses depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred (Action Level Response).

A Warning Level Response will be prompted whenever an annual (1-year) fourth-high monitored daily peak 8-hour ozone concentration of 89 ppb (or greater) occurs at any monitor in Clark and Floyd Counties, or a 2-year averaged annual fourth-high daily peak 8-hour ozone concentration of 85 ppb or greater occurs at any monitor in Clark or Floyd Counties. A Warning Level Response will consist of a study to determine whether the monitored ozone level indicates a trend toward higher ozone levels or whether emissions are increasing, threatening a future violation of the ozone NAAQS. The study will evaluate whether the trend, if any, is likely to continue, and, if so, the emission control measures necessary to reverse the trend, taking into consideration the ease and timing of implementation, as well as economic and social considerations. Implementation of necessary controls will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season. If new emission controls are needed to reverse the adverse ozone trend, the procedures for emission control selection under the Action Level Response will be followed.

An Action Level Response will be triggered when a violation of the 8-hour ozone standard is monitored at any of the monitors in the maintenance area (when a 3-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 85 ppb or higher is recorded at any such monitor). In this situation, IDEM will determine the additional emission control measures needed to assure future attainment of the 8-hour ozone NAAQS. IDEM will focus on emission control measures that can be implemented within 18 months from the close of the ozone season in which the ozone standard violation is monitored.

Adoption of any additional emission control measures prompted by either of the two response levels will be subject to the necessary administrative and legal processes dictated by State law. This process will include publication of public notices, providing the opportunity for a public hearing, and other measures required by Indiana law for rulemaking by State environmental boards. If a new emission control measure is already promulgated and scheduled for implementation at the Federal or State level, and that emission control measure is determined to be sufficient to address the air quality problem or adverse trend, additional local emission control measures may be determined to be unnecessary. IDEM will submit to the EPA an analysis to demonstrate that the proposed emission control measures are adequate to return the area to attainment.

Contingency measures contained in the maintenance plan are those emission controls or other measures that the State may choose to adopt and implement to correct existing or possible air quality problems in Clark and Floyd Counties. These include, but are not limited to, the following:

i. Lower Reid vapor pressure gasoline requirements;

ii. Broader geographic applicability of existing emission control measures;

iii. Tightened RACT requirements on existing sources covered by EPA Control Technique Guidelines (CTGs) issued in response to the 1990 CAA amendments;

iv. Application of RACT to smaller existing sources;

v. Vehicle Inspection and Maintenance;

vi. One or more Transportation Control Measures sufficient to achieve at least a 0.5 percent reduction in actual area-wide VOC emissions, to be selected from the following:

A. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area-wide rideshare programs, work schedule programs, and telecommuting;

B. Transit improvement;

C. Traffic flow improvements; and,

D. Other new or innovative transportation measures not yet in widespread use that affect State and local governments as deemed appropriate;

vii. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

viii. Controls on consumer products consistent with those adopted elsewhere in the United States;

ix. VOC or NO_X emission offsets for new or modified major sources;

x. VOC or NO_X emission offsets for new or modified minor sources;

xi. Increased ratio of emission offsets required for new sources; and,

xii. VOC or NO_X emission controls on new minor sources (with VOC or NO_X emissions less than 100 tons per year).

6. Provisions for a Future Update of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, the State commits to submit to the EPA an update of the ozone maintenance plan eight years after redesignation of the County to attainment of the 8-hour ozone NAAQS. The revision will contain Indiana's plan

for maintaining the 8-hour ozone standard for 10 years beyond the first 10-year period after redesignation.

V. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 14-Year Maintenance Plan Which Can Be Used to Support Conformity Determinations?

A. How Are the Motor Vehicle Emission Budgets Developed and What Are the Motor Vehicle Emission Budgets for Clark and Floyd Counties?

Under the CAA, States are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g., reasonable further progress and attainment demonstration SIP revisions), including ozone maintenance plans, must create MVEBs based on on-road mobile source emissions allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance plan and the State has the option of setting budgets for other years in the maintenance plan. The MVEBs serve as ceilings on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality standard violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA's policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIPs as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

EPA's process for determining the adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and (3) making a finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas: Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Transportation Conformity Rule, in 40 CFR section 93.118(f), provides for MVEB adequacy findings through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm* and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan MVEB simultaneously with its review of the implementation plan itself.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Louisville 8-hour ozone area because EPA has determined that the budgets are consistent with the control measures in the SIP and that Louisville can maintain attainment of the 8-hour ozone NAAQS for the relevant required 14-year period with mobile source emissions at the levels of the MVEBs.

The MVEBs in the maintenance plan are for the entire Louisville area, which includes the Kentucky areas (Bullitt, Jefferson and Oldham Counties), in addition to Clark and Floyd Counties in Indiana. Through the transportation consultation process, it was decided that the best way to maintain the mobile source emissions for the area would be to set budgets for the entire area rather than each individual State. There is one Metropolitan Planning Organization for the entire area (the Kentuckiana Regional Planning and Development Agency). The transportation network modeling and transportation conformity determinations are conducted for the entire Louisville area. The transportation conformity regulations allow States to decide in consultation with the transportation partners, to determine budgets for the entire area or for each state. The transportation conformity budgets are listed in the Table below. MVEBs are proposed for both the 2020 year or last year of the maintenance plan and also for the 2003 year which is an attainment year.

LOUISVILLE KY-IN 8-HOUR OZONE REGIONAL MOTOR VEHICLE EMISSIONS BUDGETS

(Tons per day)

	2003	2020
VOC	40.97	22.92
NO_X	95.51	29.46

Kentucky and Indiana have jointly chosen to allocate a portion of the available safety margin to the 2020 MVEBs. This allocation is 6.03 tpd for VOC and 9.84 tpd for NO_X. The 2020 regional MVEBs are derived as follows for VOC: [16.89 tpd for total mobile emissions] + [6.03 tpd from available safety margin] = 22.92 tpd; and for NO_X: [19.62 tpd for total mobile emissions] + [9.84 tpd from available safety margin] = 29.46 tpd. Thus, the remaining safety margin for the interstate Louisville area is 15.76 tpd for VOC and 102.69 tpd for NO_X.

These budgets are the same as the budgets that have been submitted by the State of Kentucky for the entire Louisville area and have been discussed by the transportation partners for the Louisville area.

Through this rulemaking, EPA is proposing to approve the 2003 and 2020 MVEBs for the interstate Louisville 8-hour ozone area for use to determine transportation conformity because EPA has determined that the interstate Louisville area maintains the standard with emissions at the levels of the budgets. If EPA approves the 2003 and

2020 MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new regional 2003 and 2020 MVEBs, if found adequate or if approved in the final rulemaking, will be effective with the publication of EPA's adequacy finding or final rulemaking in the **Federal Register**, whichever is done first. For required regional emissions analysis years that involve the year 2020 or beyond, the applicable budgets for the purposes of conducting transportation conformity will be the 2020 MVEBs for the interstate Louisville area. For required analysis years prior to 2020, the applicable budgets will be the 2003 MVEBs.

B. Are the MVEBs Approvable?

The VOC and NO_X MVEBs for Louisville are approvable because they provide for continued maintenance of the 8-hour ozone standard through 2020 and provide a 6.03 tons-per-day safety margin for VOC and 9.84 tons-per-day safety margin for NO_X.

EPA is proposing to approve the 2003 and 2020 MVEBs for the interstate Louisville area because the maintenance plans demonstrate that expected emissions for the area, including the MVEBs plus the estimated emissions for all other source categories, will continue to maintain the 8-hour ozone standard.

VII. What is the Effect of EPA's Proposed Action?

Approval of the redesignation request would change the official designation of Clark and Floyd Counties from nonattainment to attainment of the 8-hour ozone NAAQS. It would also incorporate into the Indiana SIP a plan for maintaining the ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes MVEBs (for the entire Louisville area) for the years 2003 and 2020.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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

Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes approval of a state rule implementing a Federal Standard.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' 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).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTAA do not apply.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: April 30, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–8772 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2007–0258; FRL–8310–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Iowa, Kansas, and Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Other Solid Waste Incineration (OSWI) section 111(d) negative declarations submitted by the states of Iowa, Kansas, and Missouri. These negative declarations certify that OSWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in these states.

DATES: Comments on this proposed action must be received in writing by June 7, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0258 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: hamilton.heather@epa.gov.*
3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. 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 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the states' submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: April 30, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–8798 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2007–0322; FRL–8309–8]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona, Arizona Department of Environmental Quality; State of Nevada, Nevada Division of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act, EPA granted delegation of specific national emission standards for hazardous air pollutants (NESHAP) to the Arizona Department of Environmental Quality on March 16, 2007, and to the Nevada Division of Environmental Protection on January 12, 2007. EPA is proposing to revise the Code of Federal Regulations to reflect the current delegation status of NESHAP in Arizona and Nevada.

DATES: Any comments on this proposal must arrive by June 7, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0322, by one of the following methods:

1. *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail*: *steckel.andrew@epa.gov.*
3. *Mail or deliver*: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: This document concerns the delegation of unchanged NESHAP to the Arizona Department of Environmental Quality and the Nevada Division of Environmental Protection. In the Rules and Regulations section of this **Federal Register**, EPA is amending regulations to reflect the current delegation status of NESHAP in Arizona and Nevada. EPA is taking direct final action without prior proposal because the Agency believes these actions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this 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.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Date Signed: April 19, 2007.

Deborah Jordan,

Director, Air Division, Region IX.

[FR Doc. E7–8681 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 72, No. 88
Tuesday, May 8, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0046]

Notice of Request for Extension of Approval of an Information Collection; National Animal Health Monitoring System; Small Enterprise Chicken Study 2007

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection activity to support the National Animal Health Monitoring System's national Small Enterprise Chicken Study.

DATES: We will consider all comments that we receive on or before July 9, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0046 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0046, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0046.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the Small Enterprise Chicken Study, contact Mrs. Sandra Warnken, Management and Program Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E3, Fort Collins, CO 80526; (970) 494–7193. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Small Enterprise Chicken Study 2007.

OMB Number: 0579–0260.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to protect the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases of poultry and for eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases and associated risk factors.

NAHMS' national studies have evolved into a collaborative industry and government initiative to help determine the most effective means of preventing and controlling diseases of poultry. APHIS is the only agency responsible for collecting national data on poultry health. Participation in any NAHMS study is voluntary, and all data are confidential.

APHIS plans to conduct the Small Enterprise Chicken Study for operations with 1,000 to 19,999 chickens as part of an ongoing series of NAHMS studies on the U.S. poultry population. The purpose of this study is to collect information, through a questionnaire, in order to:

- Describe characteristics of small enterprise operations, including bird species on hand, seasonal inventory, and marketing of free-range chickens or eggs, and organic or other niche-market products.
- Describe movements of animals, people, waste products, vehicles, and equipment on and off operations, and estimate the distances associated with these movements.
- Examine biosecurity practices, including bird access to the outdoors.

The questionnaire will be administered via postal mail, with followup telephone interviews for those who do not respond.

The information collected through the Small Enterprise Chicken Study will be analyzed and organized into descriptive reports. Information sheets will be derived from these reports, and the data will be disseminated to and may be used by a variety of constituents, including producers, stakeholders, academia, and others. This information will be used to develop parameters for the North American Animal Disease Spread Model (NAADSM), the Multiscale Epidemiologic/Economic Simulation and Analysis (MESA) model, and possibly other models. These disease simulation models examine how a contagious disease may spread in an animal population. The information collected from this study will also be used to develop background information on the small enterprise segment of the poultry industry. The potential benefit to the industry is a scientifically valid description of management, marketing, and biosecurity practices of the Nation's small enterprise chicken industry. The study

will assist in understanding the mechanisms of disease spread by developing background information on the small enterprise chicken industry.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Producers with 1,000 to 19,999 chickens.

Estimated annual number of respondents: 2,500.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 2,500.

Estimated total annual burden on respondents: 1,250 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of May 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–8801 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Direct Verification Pilot Study

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection for purposes of the National School Lunch Program's Direct Verification Pilot Study.

DATES: Written comments on this notice must be received on or before July 9, 2007.

ADDRESSES: 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Acting Director, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at (703) 305–2576 or via e-mail to *Steven.Carl son@fns.usda.gov.*

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1014.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson (703) 305–2017.

SUPPLEMENTARY INFORMATION: *Title:* Direct Verification Evaluation Study.

OMB Number: Not yet assigned.

Form Number: ''N/A''.

Expiration Date: To be determined.

Type of Request: New collection of information.

Abstract: The Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) expanded authorization for local education agencies (LEAs) to directly verify eligibility for the National School Lunch Program (NSLP) without contacting households, using data from other means-tested programs such as the Food Stamp Program (FSP), Temporary Assistance to Needy Families (TANF), Food Distribution Program on Indian Reservations (FDPIR), Medicaid, and the State Children's Health Insurance Program (SCHIP). Direct verification is intended to reduce burden on households and LEAs, improve program operations, and reduce the number of children losing NSLP benefits due to household non-response to verification requests.

In an effort to understand the methods of direct verification and their effectiveness, the Direct Verification Pilot Study will systematically collect data from eight States. Currently, there is limited information on the feasibility and effectiveness of direct verification. The information to be collected is necessary to understand and assess the effectiveness of direct verification; compare different implementation methods; and inform States about best practices and cost savings.

Respondents: State Child Nutrition Agency officials, State Medicaid Agency officials, and Local Education Agency school food service directors.

Estimate of Burden: State Child Nutrition Agency Initial Interview: Public burden for respondents of the State Child Nutrition Agency initial interview is estimated at 210 minutes (3.5 hours) for 8 respondents for one response each.

State Child Nutrition Agency Follow-up Interview: Public burden for respondents of the State Child Nutrition Agency follow-up interview is estimated at 150 minutes (2.5 hours) for 8 respondents for one response each.

State Medicaid Agency Interview: Public burden for respondents of the State Medicaid Agency Interview is estimated at 75 minutes (1.25 hours) for 8 respondents for one response each.

State Medicaid Agency Follow-up Interview: Public burden for respondents of the State Medicaid Agency follow-up interview is estimated

at 75 minutes (1.25 hours) for 8 respondents for one response each.

Local Education Agency Administrative Data Collection: Public burden for respondents of the Local Education Agency administrative data collection is estimated at 30 minutes (0.5 hours) for 240 respondents for one response each.

Local Education Agency Survey: Public burden for respondents of the LEA survey is estimated at 20 minutes (0.33 hours) for 240 respondents for one response each.

Local Education Agency Interview: Public burden for respondents of the LEA Agency Interview is estimated at 60 minutes (1 hour) for 40 respondents for one response each.

Description	No. of respondents	No. of responses per respondent	Hours per response	Total hours
State Child Nutrition Agency—Initial Interview	8	1	3,500	28.00
State Child Nutrition Agency—Follow-up Interview	8	1	2,500	20.00
State Medicaid Agency Interview	8	1	1,250	10.00
State Medicaid Agency Follow-up Interview	8	1	1,250	10.00
Local Ed. Agency Administrative Data Collection	240	1	0.500	120.00
Local Education Agency Survey	240	1	0.333	80.00
Local Education Agency Survey Interview	40	1	1.000	40.00
Total	256			308.00

Estimated Number of Respondents: 256.

Estimated Number of Responses per Respondent: 2.2 (average).

Estimated Total Annual Responses: 552.

Estimated Time per Response: 0.56.

Estimated Total Annual Burden on Respondents: 308 hours.

Dated: April 27, 2007.

Nancy Mont Johner,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 07–2279 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee, Custer, SD

AGENCY: USDA Forest Service.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Secure Rural Schools and Community Self determination Act of 2000 (Pub. L. 106–393), the Black Hills National Forest's Custer County Resource Advisory Committee will meet on Thursday, June 7, 2007 in Custer, South Dakota for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on June 7, 2007, will begin at 6 p.m. at the Black Hills National Forest Supervisor's office at 1019 N. 5th Street, Custer, South Dakota. Agenda topics will include the discussion of potential projects.

FOR FURTHER INFORMATION CONTACT: Mike Lloyd, Hell Canyon District Ranger and Designated Federal Officer, at 605–673–4853.

Michael D. Lloyd,

District Ranger.

[FR Doc. 07–2259 Filed 5–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of Finding of No Significant Impact and Environmental Assessment for Use of NRCS Conservation Practices To Address Natural Resource Concerns on Non-Federal Lands in the New England States and New York

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of Availability of finding of no significant impact and environmental assessment.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended; the Council of Environmental Quality Guidelines (40 CFR Part 650); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental assessment (EA) has been prepared for the use of NRCS conservation practices to address natural resource concerns on non-federal lands in the New England States and New York. The environmental assessment of this federally assisted action indicates that the provision of financial assistance to implement common conservation practices identified within the EA will not result in significant individual or cumulative impacts on the quality of the human environment, particularly when focusing on the significant adverse impacts that NEPA is intended to help decision makers avoid and mitigate against. As a result of these findings, Ms. Margo L. Wallace (Connecticut), Ms. Joyce Swartzendruber (Maine), Ms. Christine Clarke (Massachusetts), Mr. George Cleek, IV, (New Hampshire), Mr. Ron Alvarado (New York), Ms. Roylene Rides at the Door (Rhode Island), and Ms. Judith M. Doerner (Vermont), State Conservationists, have made a Finding of No Significant Impact (FONSI) and determined that the preparation and review of an environmental impact statement are not required.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Swartzendruber, State Conservationist, Natural Resources Conservation Service, 967 Illinois Avenue, Suite 3, Bangor, ME 04401. Telephone 207–990–9100 extension#3.

Single copies of the EA or additional information on matters related to this **Federal Register** Notice, may be obtained by contacting Ms. Joyce Swartzendruber at the above address or Web site at:

ftp://ftp-fc.sc.egov.usda.gov/ENTSC/Outgoing/FONSI_and_Regional_EA.pdf.

Comments can be posted online at the *www.regulations.gov* Web site or mailed to the above address. Comments must be received no later than 30 days after this notice is published.

DATES: To ensure consideration, comments on the EA and FONSI must be received or post-marked on or before 30 days from publication on this EA and FONSI in the **Federal Register**.

SUPPLEMENTARY INFORMATION: No administrative action on

implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: April 30, 2007.

Joyce A. Swartzendruber,

State Conservationist, Maine.

[FR Doc. E7–8790 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1511]

Grant of Authority for Subzone Status, Academy Sports and Outdoors (Apparel, Footwear, and Sporting Goods), Katy and Brookshire, Texas

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''. . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port of Houston Authority, grantee of Foreign–Trade Zone 84, has made application for authority to establish special–purpose subzone status at the apparel, footwear, and sporting goods warehousing and distribution facilities of Academy Sports and Outdoors in Katy and Brookshire, Texas (Docket 22–2006, filed 6–13–2006);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 35612, 6–21–2006); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to apparel, footwear, and sporting goods warehousing and distribution at the Academy Sports and Outdoors facilities located in Katy and Brookshire, Texas (Subzone 84S), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 30th day of April 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–8791 Filed 5–7–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–580–857)

Notice of Amended Preliminary Countervailing Duty Determination: Coated Free Sheet Paper from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 9, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of preliminary affirmative countervailing duty determination in the investigation of coated free sheet (''CFS'') paper from the Republic of Korea (''Korea''). We are amending our preliminary determination to correct ministerial errors discovered with respect to the countervailing duty rate calculation for Hansol Paper Co., Ltd. (''Hansol''). This correction also affects the countervailing duty rate applied to all other companies not individually investigated.

EFFECTIVE DATE: May 8, 2007.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords or Robert Copyak, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3146 and (202) 482–2209, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2007, we published in the **Federal Register** the preliminary determination that countervailable subsidies are being provided to producers and exporters of CFS paper from Korea, as provided in section 703 of the Tariff Act of 1930, as amended (''the Act''). *See Coated Free Sheet Paper From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17507 (April 9, 2007). On April 9, 2007, Hansol filed timely allegations of significant ministerial errors contained in the Department's preliminary determination. After reviewing the allegations, we have determined that the preliminary determination included significant ministerial errors. Therefore, in accordance with 19 CFR 351.224(e), we have made changes, as described below, to the preliminary determination.

Scope of Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not–more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface–colored, surface–decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double–side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Analysis of Alleged Significant Ministerial Errors

A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from

inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' With respect to preliminary determinations, 19 CFR 351.224(e) provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination. . . .'' A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the countervailable subsidy rate calculated in the original (erroneous) preliminary determination; or (2) a difference between a countervailable subsidy rate of zero (or *de minimis*) and a countervailable subsidy rate of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g). We have determined that the preliminary determination contained ''significant'' ministerial errors with respect to Hansol. As a result, the Department is publishing this amendment to its preliminary determination pursuant to 19 CFR 351.224(e).

Amended Preliminary Determination

Because the combined errors alleged by Hansol regarding the countervailable subsidy rate calculation for Hansol were significant, we have amended the preliminary countervailing duty rate calculations for Hansol. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from the Team, AD/CVD Operations, Office 3, regarding Allegations of Ministerial Errors in the Calculations for the Preliminary Determination, dated April 30, 2007.[1] In addition, we have amended the ''All Others'' rate applicable to companies that were not individually investigated. As a result of corrections of ministerial errors, the countervailable subsidy rates are as follows:

Producer/Exporter	Original Subsidy Rate	Amended Subsidy Rate
EN Paper	0.08 ad valorem	0.08 ad valorem
Hansol	1.76 ad valorem	0.89 ad valorem
Kyesung (and its affiliate Namhan)	0.59 ad valorem	0.59 ad valorem
Moorim (and its affiliate Moorim SP)	0.04 ad valorem	0.04 ad valorem
All Others Rate	1.76 ad valorem	de minimis

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 703(d) and (f) of the Act. Specifically, since the amended preliminary determination is negative, we are directing U.S. Customs and Border Protection (''CBP'') to terminate suspension of liquidation of all entries of the subject merchandise from Korea.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of CFS paper, or sales (or the likelihood of sales) for importation, of the subject merchandise within 75 days of our final determination.

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: April 30, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–8792 Filed 5–7–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070426092–7092–01; I.D. 043007B]

Program for Professional Development of Educators in Atmospheric and Ocean Sciences

AGENCY: Office of Education (OED), Office of the Undersecretary of Commerce for Oceans and Atmosphere (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: NOAA's Office of Education (OED) is requesting applications to establish an institutional award for the purpose of supporting a professional development program for pre-service and in-service educators that is designed to support NOAA's mission by improving their knowledge of atmospheric and ocean sciences. The successful project will be national in scale with implementation on a local level. The project will include distance-learning and face-to-face components and allow teachers to earn graduate-level credit-hours from an accredited university in the United States. The project will involve NOAA scientists and other members of the scientific community. The successful project will build upon existing professional development courses; employ vetted classroom instructional materials; use web-based technology as a means to deliver cutting-edge scientific content directly to their target audience; and enhance teachers' ability to extract information from the web. It is anticipated that the final recommendation for funding under this announcement will be made by June 30, 2007, and that the project funded under this announcement will have a start date no earlier than September 15, 2007.

DATES: The application must be received by 5 p.m., EDT June 7, 2007.

ADDRESSES: Full applications must be submitted either through Grants.gov or as a paper application to: ATTN: Grants Competition Manager, NOAA Office of Education, U.S. Department of Commerce, 1401 Constitution Ave, NW., HCHB Room 6863, Washington, DC 20230. Please note: Hard copies submitted via the U.S. Postal Service can take up to 4 weeks to reach this office; applicants are recommended to send hard copies via expedited shipping methods (*e.g.*, Airborne Express, DHL, FedEx, UPS)

[1] This public document is available on the public record in the Department's Central Records Unit (room B-099).

FOR FURTHER INFORMATION CONTACT: Sarah Schoedinger at *sarah.schoedinger@noaa.gov*, telephone 704–370–3528 or Alyssa Gundersen at *Alyssa.Gundersen@noaa.gov*, telephone 202–482–3739.

SUPPLEMENTARY INFORMATION: NOAA's Office of Education (OED) is requesting applications to establish an institutional award for the purpose of supporting an ongoing professional development program in the fields of atmospheric and ocean sciences for pre-service and in-service educators. The intent of this award is to establish and maintain a long-term partnership between NOAA and the recipient organization. The goals of this project must meet OED's long-term goals and objectives common to the programmatic needs of both parties by employing the relevant strategies articulated in the NOAA Education Plan (*http://www.oesd.noaa.gov/NOAA_Ed_Plan.pdf*).

Proposed projects should include components designed to improve teachers' understanding of the Earth System through ocean and/or atmospheric studies, incorporate existing NOAA data and educational materials, and include realistic and relevant inquiry-based learning experiences using on-line data products. Proposed projects should address one or more of the goals articulated in the NOAA Education Plan, build upon existing professional development programs, involve partnerships among academic institutions and professional scientific organizations, and have an evaluation that both monitors the quality of the experience for the participants and also the impact of the program on the participants. Projects should be designed to generate and sustain a network of educators that allows for rapid, but sustainable program growth during the project period. Projects should also ensure that the content learned in the professional development courses is implemented in the classroom.

The successful project will:

—Include distance-learning and face-to-face components;
—Allow teachers to earn graduate-level credit-hours from an accredited university in the United States;
—Involve NOAA scientists and other members of the scientific community;
—Build upon existing professional development courses;
—Employ vetted classroom instructional materials;
—Use web-based technology as a means to deliver cutting-edge scientific content directly to their target audience; and
—Enhance teachers' ability to extract information from the web.

It is anticipated that the final recommendation for funding under this announcement will be made by June 30, 2007, and that the project funded under this announcement will have a start date no earlier than September 15, 2007.

Electronic Access

The full text of the full funding opportunity announcement for this OED program can be accessed via the Grants.gov web site. That announcement will also be available at the NOAA Web site: *http://www.oesd.noaa.gov/funding_opps.html* or by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement. This **Federal Register** notice is available through the NOAA home page at: *http://www.noaa.gov/*.

Statutory Authority: 15 U.S.C. 1540.

CFDA: 11.469, Congressionally Identified Awards and Projects.

Funding Availability: NOAA anticipates the availability, contingent upon appropriations, of approximately $3,000,000 of Federal financial assistance total over the five year period of FY 2007 to FY 2011 for an institutional award that will support professional development of educators related to improving their knowledge of atmospheric and ocean sciences. Approximately $600,000 will be available annually for the five year award period. Only one award in the form of a grant or cooperative agreement will be made. NOAA will only consider projects that have a duration of 5 years. The total Federal amount for all years that may be requested from NOAA for the direct and indirect costs of the proposed project shall not exceed $600,000 annually. The minimum Federal amount that must be requested from NOAA per year for the direct and indirect costs is $300,000. Applications requesting Federal support from NOAA of less than $300,000 total or more than $600,000 annually for 5 years will not be considered for funding.

The amount of funding available through this announcement will be dependent upon the final appropriations for FY 2007 through FY 2011. Publication of this notice does not oblige the Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) to award any specific project or to obligate any available funds. If an applicant incurs any costs prior to receiving an award agreement approved by an authorized NOAA Grants Officer, the applicant would do so solely at one's own risk of such costs not being included under the award. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives.

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, and state, local and Indian tribal governments in the United States. For-profit organizations, individuals not affiliated with an eligible organization, foreign institutions, foreign organizations and foreign government agencies are not eligible to apply. Federal agencies are not eligible to receive Federal assistance under this announcement, but may be project partners.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to increasing the participation of Minority Serving Institutions (MSIs), *i.e.*, Historically Black Colleges and Universities, Hispanic-serving institutions, Tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that work in underserved communities.

Institutions may submit only one application to this funding opportunity.

Cost Sharing Requirements: There are no cost-sharing requirements.

Evaluation and Selection Procedures: The general evaluation criteria and selection factors that apply to applications to this funding opportunity are summarized below. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria for Projects:

1. *Importance and/or relevance and applicability of proposed project to the program goals:* This 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 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 ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

4. *Project costs:* The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. *Outreach and education:* NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Review and Selection Process

Upon receipt of an application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. All applications that meet the minimum eligibility requirements and that are ascertained to be complete will be evaluated and scored by independent reviewers. The reviews will be conducted by a panel of individuals, who may be government or non-government representatives, each having relevant expertise. The reviewers will score each proposal using the evaluation criteria and relative weights provided above. The individual reviewers' ratings will be averaged for each application to establish rank order. No consensus advice will be given by the review panel. The Program Officer will neither vote nor score applications as part of the review panel nor participate in discussion of the merits of any proposal.

The Program Officer will make his/her recommendations for funding based on rank order and the selection factors listed below to the Selecting Official for the final funding decision.

Selection Factors for Projects

The panel review ratings shall establish the rank order that the Selecting Official will use for final recommendation to the NOAA Grants Officer. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:

a. Geographically
b. By type of institutions
c. By type of partners
d. By research areas
e. By project types

3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: May 2, 2007.

Daniel Clever,

Deputy Director, NOAA Acquisitions and Grants, U.S. Department of Commerce.

[FR Doc. E7–8715 Filed 5–7–07; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070419090–7090–01; I.D. 050107B]

Program for Technology-based Experiential Learning in Science for Grades 4–9 Students and Teachers

AGENCY: Office of Education (OED), Office of the Undersecretary of Commerce for Oceans and Atmosphere (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: NOAA's Office of Education (OED) is requesting applications for a technology-based science experiential learning program to impact 4th through 9th grade students and teachers. One award will be made for a project five years in duration. The successful project will draw heavily on NOAA marine scientific resources as well as an existing set of vetted educational products. The project should feature print materials for students and teachers, multimedia products, out-of-the classroom activities and incorporate on-line elements such as live chat, podcasts or computer simulations to provide students with access to scientists and promote inquiry-based learning. A successful applicant will have extensive partnerships with NOAA, as well as other Federal, local, and private organizations. It is anticipated that final recommendations for funding under this announcement will be made by June 30, 2007, and that projects funded under this announcement will have a start date no earlier than September 15, 2007.

DATES: The deadline for applications is 5 p.m., EDT June 7, 2007.

ADDRESSES: Full applications must be submitted either through *Grants.gov* or as a paper application to: ATTN: Grants Competition Manager, NOAA Office of Education, U.S. Department of Commerce, 1401 Constitution Ave, NW., HCHB Room 6863, Washington, DC 20230. Please note: Hard copies submitted via the U.S. Postal Service can take up to 4 weeks to reach this office; applicants are recommended to send hard copies via expedited shipping methods (*e.g.*, Airborne Express, DHL, Fed Ex, UPS).

FOR FURTHER INFORMATION CONTACT: Sarah Schoedinger at *sarah.schoedinger@noaa.gov*, telephone 704–370–3528 or Alyssa Gundersen at *alyssa.gundersen@noaa.gov*, telephone 202–482–3739.

SUPPLEMENTARY INFORMATION: NOAA's Office of Education (OED) is requesting applications for a technology-based science experiential learning program, with interdisciplinary connections to math and other disciplines, for 4th through 9th grade students and teachers. The successful project will draw heavily on NOAA scientific research, personnel, facilities and educational resources to reach classroom students and their teachers in the United States. The project should feature print materials for students and teachers, multimedia products, out-of-the classroom activities and incorporate on-line elements such as live chat, podcasts or computer simulations to provide students with access to scientists and promote inquiry-based learning. The project should provide an online platform that allows teachers to create customized lesson plans based on the proposed curriculum, to develop assessments aligned to their local standards, to create reports on the use and impact of each program element. Additionally, the project will allow teachers both onsite and online to earn graduate-level credit-hours from an accredited university in the United States. All projects shall employ the strategies articulated in the NOAA Education Plan (*http://www.oesd.noaa.gov/NOAA_Ed_Plan.pdf*).

A successful applicant will have extensive partnerships with NOAA, as well as other Federal, local, and private organizations. The applicant or project partners should be highly experienced in developing and employing telepresence technology and delivering programming to the scientific and educational communities as well as the general public.

It is anticipated that final recommendations for funding under this announcement will be made by June 30, 2007, and that projects funded under this announcement will have a start date no earlier than September 15, 2007.

Electronic Access

The full text of the full funding opportunity announcement for this OED program can be accessed via the Grants.gov web site. That announcement will also be available at the NOAA Web site: *http://www.oesd.noaa.gov/funding_opps.html* or by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement. This **Federal Register** notice is available through the NOAA home page at: *http://www.noaa.gov/*.

Statutory Authority: 15 U.S.C. 1540.

CFDA: 11.469, Congressionally Identified Awards and Projects.

Funding Availability

NOAA anticipates the availability, contingent upon appropriations, of approximately $2,000,000 of Federal financial assistance in FY 2007 for a technology-based experiential learning program for 4th through 9th grade students and teachers. One award in the form of a grant will be made. NOAA will only consider projects that have a duration of 5 years. The total Federal amount for all years that may be requested from NOAA for the direct and indirect costs of the proposed project shall not exceed $12,500,000 for 5 years. Applications requesting Federal support from NOAA of less than $1,000,000 total or more than $12,500,000 total will not be considered for funding through this announcement.

The amount of funding available through this announcement will be dependent upon the final appropriations for FY 2007 through FY 2011. Publication of this notice does not oblige the Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) to award any specific project or to obligate any available funds. If an applicant incurs any costs prior to receiving an award agreement signed by an authorized NOAA Grants Officer, the applicant would do so solely at their own risk of such costs not being included under the award. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives.

Eligibility

Eligible applicants are institutions of higher education, other nonprofits, and state, local and Indian tribal governments in the United States. For-profit organizations, individuals not affiliated with an eligible organization, foreign institutions, foreign organizations and foreign government agencies are not eligible to apply. Federal agencies are not eligible to receive Federal assistance under this announcement, but may be project partners.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is

strongly committed to increasing the participation of Minority Serving Institutions (MSIs), *i.e.*, Historically Black Colleges and Universities, Hispanic-serving institutions, Tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that work in underserved communities.

Institutions may submit only one application to this funding opportunity.

Cost Sharing Requirements

There are no cost-sharing requirements.

Evaluation and Selection Procedures

The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria for Projects

1. Importance and/or relevance and applicability of proposed project to the program goals: This 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 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 ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

4. Project costs: The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Review and Selection Process

Upon receipt of an application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. All applications that meet the minimum eligibility requirements and that are ascertained to be complete will be evaluated and scored by independent reviewers. The reviews will be conducted by a panel of individuals, who may be government or non-government representatives, each having relevant expertise. The reviewers will score each proposal using the evaluation criteria and relative weights provided above. The individual reviewers' ratings will be averaged for each application to establish rank order. No consensus advice will be given by the review panel. The Program Officer will neither vote nor score applications as part of the review panel nor participate in discussion of the merits of any proposal.

The Program Officer will make his/her recommendations for funding based on rank order and the selection factors listed below to the Selecting Official for the final funding decision.

Selection Factors for Projects

The panel review ratings shall establish the rank order that the Selecting Official will use for final recommendation to the NOAA Grants Officer. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:

a. Geographically
b. By type of institutions
c. By type of partners
d. By research areas
e. By project types

3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not obligate NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: May 2, 2007.

Daniel L. Clever,

Deputy Director, NOAA Acquisitions and Grants, U.S. Department of Commerce.

[FR Doc. E7–8714 Filed 5–7–07; 8:45 am]

BILLING CODE 3510–12–P

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 the Peer Reviewer Application Instructions 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. Vielka Garibaldi, at (202) 606–6886, (*vgaribaldi@cns.gov*). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call at (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern Standard 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 Office for the Corporation for National and Community Service, by any of the following two methods within 30 days from the 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 Community 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 Corporation'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 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.

Comments

A 60-day public comment Notice was published in the **Federal Register** on February 1, 2007. This comment period ended on April 2, 2007; no comments were received from this notice.

Description: The Corporation is seeking approval of the Peer Reviewer Application Instructions form which will be used by Grant Review Specialists in the Office of Grant Policy and Operations to select peer reviewers and facilitators for each grant competition. All individuals interested in applying as peer reviewers or facilitators of the peer review panels will be required to complete an electronic application. The current application is due to expire on October 31, 2007. Modifications include instructions related to log-in into eGrants and enhancements to the personal profile, contact information section, and areas of expertise.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Peer Reviewer Application.

OMB Number: 3045–0090.

Agency Number: None.

Affected Public: Individuals who are interested in serving as peer reviewers or peer review panel facilitators.

Total Respondents: 2,500.

Frequency: One (1) time and updates as needed.

Average Time per Response: 40 minutes.

Estimated Total Burden Hours: 1,666 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/ maintenance): None.

Dated: April 17, 2007.

Marlene Zakai,

Director, Office of Grants Policy and Operation.

[FR Doc. E7–8713 Filed 5–7–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Surplus Properties; Notice

AGENCY: Department of the Army; DoD.

ACTION: Notice.

SUMMARY: This notice provides information regarding the properties that have been determined surplus to the United States needs in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended, and the 2005 Base Closure and Realignment Commission Report, as approved, and following screening with Federal agencies and Department of Defense components. This Notice amends the Notice published in the **Federal Register** (71 FR 26930) on May 9, 2006.

DATES: Effective May 8, 2007.

FOR FURTHER INFORMATION CONTACT: Headquarters, Department of the Army, Assistant Chief of Staff for Installation Management, Base Realignment and Closure Division, *Attn:* BAIM–BD, 600 Army Pentagon, Washington DC 20310–0600. (703) 601–2418. For information regarding a specified property listed below, contact the Army BRAC Division at *ArmyBRAC2005@hqda.army.mil* or at the mailing address above.

SUPPLEMENTARY INFORMATION: Under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, the Defense Base Closure and Realignment Act of 1990, as amended, and other public benefit conveyance authorities, this surplus property may be available for conveyance to State and local governments and other eligible entities for public benefit purposes. Notices of interest from representatives of the homeless, and other interested parties located in the vicinity of any listed surplus property should be submitted to the Local Redevelopment Authority (LRA) listed on the Office of Economic Adjustment Web site: *http://www.oea.gov/oeaweb.nsf/LRA?readform.* Some of the surplus properties do not have a currently recognized LRA and therefore can not accept notices of interest. If no LRLA is listed, homeless and other interest parties may send a request to the Army at the e-mail address listed above to be notified once a LRA is recognized. The properties are listed by State. Additional information for these of any Army BRAC 2005 plus property may be found at *http://www.hqda.army.mil/acsimweb/brac/braco.htm.*

Surplus Property List

1. Addition

Arkansas

Camden—Camden USARC, 2185 Highway 79 NW; A LRA has not yet been recognized.

Connecticut

New Haven—SGT George D. Libby USARC, 200 Wintergreen Avenue; A LRA has not yet been recognized.

New York

Bronx—SGT Joseph E. Muller USARC, 555 East 238th Street; A LRA has not yet been recognized.

Pennsylvania

Scranton—CSM Samuel P. Serrenti Memorial USARC, 1801 Pine Street; A LRA has not yet been recognized.

Washington

Everett—MAJ David P. Oswald USARC, 1110 Rainer Avenue; A LRA has not yet been recognized.

Wisconsin

Madison—Truman Olson USARC, 1402 South Park Street; A LRA has not been recognized.

2. Correction

Tennessee

Chattanooga—Chattanooga (Volunteer Army Ammunition Plant) USARC (BLDG 228) 6703d Bonny Oaks Dive; Notice corrects surplus acreage from 15 acres to one acre. A LRA Has not yet been recognized.

Authority: This action is authorized by the Defense Base Closure and Realignment Act of 1990, Title XXIX of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. 101–510; the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub. L. 103–421; the Military Construction Authorization Act for Fiscal Year 1994, Division B of Pub. L. 103–106; and 10 U.S.C. 113.

Dated: April 27, 2007.

William T. Birney,

Acting Deputy Assistant Secretary of the Army (Installations and H Housing).

[FR Doc. 07–2262 Filed 5–7–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Record of Decision for the Fort Bliss, Texas and New Mexico, Mission Master Plan Final Supplemental Programmatic Environmental Impact Statement

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the availability of the Record of Decision (ROD) for the Final Supplemental Programmatic Environmental Impact Statement (SEIS) identifying the potential environmental effects of changing land and airspace use at Fort bliss to support evolving changes in missions and units and support Army Transformation, Integrated Global Presence and Basing Strategy (IGPBS), Base Realignment and Closure (BRAC), the Army Campaign Plan, and other Army initiatives.

The Final SEIS supplements the *Fort Bliss, Texas and New Mexico, Mission Master Plan Programmatic Environmental Impact Statement* (PEIS), for which a Record of Decision was signed in 2001.

DATES: The waiting period for the Final SEIS ended April 23, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Offutt, Public Affairs Officer, IMSW–BLS–PA; Fort Bliss, TX 79916–6812; *telephone:* (915) 568–4505; fax: (915) 568–2995; e-mail: *jean.offutt@bliss.army.mil.*

SUPPLEMENTARY INFORMATION: The Proposed Action (Alternative 4) is selected in this ROD. The Proposed Action changes land use in the Main Cantonment Area to support units assigned to Fort Bliss under BRAC, and in the Fort Bliss Training Complex to support construction of live-fire ranges and designation of off-road maneuver space needed to train those solders to doctrinal standards. This alternative opens to heavy off-road vehicle maneuver 352,000 acres in the Tularosa Basin portion of McGregor Range, for a total off-road vehicle maneuver space of 687,000 acres, and changes land use in the Main Cantonment to accommodate increases in military personnel. Selection of this alternative also accommodates units and missions in addition to the BRAC package, and maintains flexibility to meet future requirements. Those portions of McGregor Range outside the Tularosa Basin, specifically Otero Mesa and the Sacramento Mountain foothills, will not experience changes in land use.

The final SEIS analyzed impacts from the No Action Alternative and four action alternatives in 14 resource areas; land use, Main Cantonment Area infrastructure, airspace use and management, earth resources, air quality, water resources, biological resources, cultural resources, noise, safety, hazardous materials and items of special concern, socioeconomics, and environmental justice. The affected environment included the Fort Bliss Main Cantonment Area, the Fort Bliss Training Complex, and adjacent off-post areas that may be affected by the proposed changes on Fort Bliss. The region of influence (ROI) varies among resource topics but generally consists of a three-county area comprised of El Paso County in Texas and Doña Ana and Otero Counties in New Mexico.

From a land use perspective, the No Action Alternative would be the environmentally preferable alternative. However, it would not meet the Army's need to provide training to doctrinal standards to the units stationed at Fort bliss. After the No Action Alternative, Alternative 1 is environmentally preferable in comparison to the other action alternatives because it would limit the effects of off-road vehicle maneuver training on McGregor Range

to a smaller area than the other three alternatives. It would also avoid impacts to grazing in the north Tularosa Basin portion of McGregor Range, as well as impacts to grasslands in the southeast training areas.

Copies of the ROD are available at the following libraries: In el Paso, the Richard Burges Regional Library, 9600 Dyer; the Irving Schwartz Branch Library, 1865 Dean Martin; the Clardy Fox Branch Library, 5515 Robert Alva; and the Doris van Doren Regional Branch Library, 551 Redd Branch Road. In Las Cruces, NM, the New Mexico State University Zuhl Library at 2999 McFie Circle; and in Alamogordo, NM at the Alamogordo Public Library, 920 Oregon Avenue. The document can also be reviewed at *https://www.bliss.army.mil.*

John A. Macdonald,

Brigadier General, U.S. Army, Deputy Commanding General, Installation Management Command.

[FR Doc. 07–2263 Filed 5–7–07; 8:45am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR 404.7 (a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license within the geographic area of the United States of America and its territories and possessions to U.S. Patent application 11/279,027, filed April 7, 2007 entitled ''Artillery Rocket Kinetic Energy Rod Warhead'', to General Dynamics Ordnance and Tactical Systems with its principal place of business at 4565 Commercial Drive, Niceville, FL 32578.

ADDRESSES: Commander, U.S. Army Research Development and Engineering Command, *ATTN:* AMSRD–AMR–AS–PT–TR, Bldg 5400, Redstone Arsenal, AL 35898–5000.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Russ Alexander, Office of Research & Technology Applications, (256) 876–8743.

SUPPLEMENTARY INFORMATION: One object of the present invention is to realize a highly accurate Kinetic Energy (KE) rod warhead. Another object is to provide an easily assembled KE rod warhead. Yet another object is to provide a warhead that removes the problems inherent with unexploded ordnance. These and other objects are provided by a warhead having a plurality of tier pack bulkheads arranged in a stacked formation around a center column to form a plurality of tier packs. A plurality of skin severance trays are connected to the plurality of tier pack bulkheads. A bulkhead collar and an aft bulkhead are connected to the center column with the plurality of tier packs being positioned between the bulkhead collar and the aft bulkhead. A plurality of holding trays, separated by dividers, is positioned within the plurality of tier packs, the holding trays being positioned between respective tier pack bulkheads. The holding trays are filled with KE rods.

Brenda S. Bowen,

Army Federal Register Liaison Officer

[FR Doc. 07–2261 Filed 5–7–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Diagnostic Fuze Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel aeroballistic diagnostic system as described in U.S. Patent 6,349,652; entitled ''Aeroballistic Diagnostic System''; Hepner; *et al.* Any license shall apply comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, *ATTN:* AMSRL–DP–AT/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, *Telephone:* (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–2260 Filed 5–7–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license within the geographic area of the United States of America and its territories and possessions to U.S. Patent number 6,181,303, issued on January 30, 2001 entitled ''Flat panel three-dimensional display unit'', to Polaris Sensor Technologies, Inc. with its principal place of business at 200 West Court Square Suite 302, Huntsville, AL 35801.

ADDRESSES: Commander, U.S. Army Research Development and Engineering Command, *ATTN:* AMSRD–AMR–AS–PT–TR, Bldg 5400, Redstone Arsenal, AL 35898–5000.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Ms. Cindy Wallace, Office of Research & Technology Applications, (256) 313–0895.

SUPPLEMENTARY INFORMATION: Two liquid crystal display panels, stacked together into a flat compact unit, in conjunction with a dedicated processor producing the appropriate video signals to drive the panels, generates a pair of polarization-encoded left and right images and exhibits them as a stereo image that is viewable through a pair of standard polarized glasses. This makes it possible to obtain stereo effect at a video workstation or at a console by eliminating the bulky box-like setup or the need to project onto a screen.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–2264 Filed 5–7–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Reissuance of Nationwide Permits; Notice

AGENCY: Army Corps of Engineers, DoD.

ACTION: Correction.

SUMMARY: This document contains corrections to the final notice of issuance of Nationwide Permits (NWPs) which was published in the **Federal**

Register on Monday, March 12, 2007 (72 FR 11092—11198).

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO, 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil* or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.*

On page 11172, third column, in the first sentence of the fourth full paragraph (the preamble discussion of the definition of ''discharge''), delete the text following the word ''clarify'' and replace it with the following: ''That this term is used in the NWPs to refer to a discharge of dredged or fill material.'' Delete the second sentence of this paragraph.

On page 11185, first column, in Note 2 of NWP 24, replace the reference to 33 CFR 322.3(a)(2) with 33 CFR 322.4(b).

On page 11194, third column, in the last sentence of paragraph (a) of general condition 27 insert the phrase ''until either'' between the word ''activity'' and the colon. In the first sentence of subparagraph (a)(1) of general condition 27, replace the word ''Until'' with the phrase ''He or she is''. In the first sentence of subparagraph (a)(2) of general condition 27, delete the word ''If'' and replace the number 45 with the words ''Forty-five''.

On page 11196, second column, in the definition of ''discharge'', insert a period after the word ''material'' and delete the rest of the sentence.

Dated: May 3, 2007.

Mark F. Sudol,

Acting Chief, Operations, Directorate of Civil Works.

[FR Doc. E7–8782 Filed 5–7–07; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice; correction.

SUMMARY: The National Assessment Governing Board published a document in the **Federal Register** of May 2, 2007, announcing the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. The meeting agenda has been revised.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu at (202) 357–6906.

Correction

In the **Federal Register** of May 2, 2007, in FR DOCID: fr02my07–43, Volume 72, Number 84, page 24282, delete the sentence ''Assessment Development Committee: Open Session12 p.m. to 3 p.m.'' and delete the sentence on page 24282 that reads ''On May 17, the Assessment Development Committee will meet in open session from 12 p.m. to 3 p.m.'' This meeting of the Assessment Development Committee is cancelled.

On page 24282, delete the paragraph that reads ''On May 18, the full Board will meet in closed session from 12:15 p.m. to 1:45 p.m. The Board will receive a briefing provided by the National Center for Education Statistics on the NAEP 2006 U.S. History and Civics Report Cards. The Governing Board will be provided with embargoed data that cannot be discussed in an open meeting prior to their official release. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of The Nation's Report Card initial release activities, as protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.'' Replace this paragraph with the following sentence, ''On May 18, the full Board will meet in open session from 12:15 p.m. to 1:45 p.m. to receive a briefing provided by the National Center for Education Statistics on the NAEP 2006 U.S. History and Civics Report Cards.'' This session of the Board meeting is now open to the public.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 3, 2007.

Charles E. Smith,

Executive Director, U.S. Department of Education, National Assessment Governing Board.

[FR Doc. E7–8800 Filed 5–7–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals; Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $1,592,901, plus accrued interest, in motor gasoline overcharges obtained by the DOE pursuant to remedial orders issued to Powerine Oil Company, Case No. TEF–0006, and Storey Oil Company, Inc., Case No. TEF–0009. The OHA has tentatively determined that the funds will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V.

DATES: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**.

ADDRESSES: Comments should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1615. All comments should display a reference to Case Nos. TEF–0006 or TEF–0009.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr., Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585–1615, (202) 287–1589, *richard.cronin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $1,592,901, plus accrued interest, obtained by the DOE pursuant to Remedial Orders issued to Powerine Oil Company (Powerine) and Storey Oil Company, Inc. (Storey). The Remedial Orders issued to Powerine and Storey adjudicated allegations concerning violations of the federal petroleum price regulations involving the sale of motor gasoline during the

price control period, August 13, 1973 through January 27, 1981.

The OHA has proposes to distribute the Remedial Order funds in a refund proceeding described in the Proposed Decision and Order to provide restitution for those parties injured by Powerine or Storey's alleged violations of pricing regulations for motor gasoline. Purchasers of motor gasoline from Powerine or Storey will have the opportunity to submit refund applications. Refunds will be granted to applicants who satisfactorily demonstrate that they were injured by the pricing violations and who document the volume of motor gasoline they purchased from one of the firms during the price control period.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submission, within 30 days of the publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal Holidays, in Room 7132 (the public reference room), 950 L'Enfant Plaza, Washington, DC.

Fred L. Brown,

Acting Director, Office of Hearings and Appeals.

Proposed Decision and Order

Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Powerine Oil Company, Storey Oil Company, Inc.
Dates of Filing: June 23, 2005. June 23, 2005.
Case Numbers: TEF–0006. TEF–0009.

The Office of General Counsel (OGC) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by Powerine Oil Company (Powerine) and Storey Oil Company (Storey) pursuant to Remedial Orders DOE has issued regarding them and have determined that such procedures are appropriate.

Under the terms of the Remedial Orders, Powerine's bankruptcy trustee has remitted a total of $1,546,302 to the DOE to remedy motor gasoline retailer-reseller pricing violations which occurred during the price control period, August 13, 1973 through January 27, 1981. Storey has remitted a total of $46,599 to remedy similar violations. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's proposed plan to distribute those funds. The specific application requirements we propose appear in Section III of this Decision.

I. Background

Powerine was a privately held corporation which operated a refinery located in Santa Fe Springs, California during the price control period. During this period, Storey, operating in Colorado, was a reseller of refined petroleum products. Economic Regulatory Administration audits of Powerine and Storey revealed possible violations of the Mandatory Petroleum Price Regulations (MPPR) in their sales of motor gasoline. Subsequently, OHA issued Remedial Orders in each case directing Powerine and Storey to remit to the DOE $7,956,934 and $64,639, respectively, in restitution for overcharges by each firm in sales to their customers during the period of price controls.[1]

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE ¶ 82,508 (1981) and Office of Enforcement, 8 DOE ¶ 82,597 (1981).

III. Refund Procedures

A. Allocation of Consent Order Funds

Both firms' violations of the MPPR involved sales of a refined petroleum product—motor gasoline. Consequently, all of the funds that have been remitted by Powerine and Storey will be allocated for restitution to those parties injured by the firms' alleged violations of the pricing regulations for motor gasoline.

B. Refined Petroleum Product Refund Procedures

1. Application Requirements

In cases where the ERA is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage, those who bought refined petroleum products from the consenting firms may apply for refunds, which are typically calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the price control period.

In the present case, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consenting firms. In particular, we have been unable to obtain any information on the volumes of motor gasoline products sold by the firms during the price control period. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we will accept any refund claims submitted by persons who purchased motor gasoline from Powerine or Storey during the settlement periods discussed above. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts. [2]

To apply for a refund from the Powerine or Storey Remedial Order funds, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, social security number or taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and

[1] See Powerine Oil Company, 21 DOE ¶ 83,008 (1991); Storey Oil Company, Inc., 16 DOE ¶ 83,007 (1987).

[2] Applications for Refund will be accepted only for motor gasoline pricing violations.

the name and address of the person who should receive any refund check; [3]

(2) A monthly motor gasoline gallonage purchase schedule covering the price control order period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its motor gasoline purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization must be submitted;

(4) If the applicant is or was in any way affiliated with Powerine or Storey, it must explain this affiliation, including the time period in which it was affiliated; [4]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will made available at OHA.

[3] An applicant must submit the social security number or employer identification number of the person or legal entity that is seeking the refund. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law.

[4] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of a Remedial Order firm were not injured by the firm's overcharges. See, e.g., Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is because the Remedial Order firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of the Remedial Order firm were granted a refund, the remedial order firm would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

All applications should be either typed or printed and clearly labeled with the name and case number of the relevant firm (Powerine Oil Company, Case No. TEF–0006 or Storey Oil Company, Inc., Case No. TEF–0009). Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to the address below:

Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0107.

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by ''representatives,'' including refund filing services, consulting firms, accountants, and attorneys. See, e.g., Starks Shell Service, 23 DOE ¶ 85,017 (1993); Texaco Inc., 20 DOE ¶ 85,147 (1990) (Texaco); Shell Oil Co., 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 C.F.R. § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Finally, the OHA reserves the authority to require additional information from an applicant before granting any refund in these proceedings.

2. Allocation Claims

We may receive claims based upon Powerine's or Storey's failure to furnish motor gasoline that they were obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR Part 211. Any such application will be evaluated with reference to the standards set forth in Texaco (and cases cited therein). See Texaco, 20 DOE at 88,321.

3. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Powerine and Storey Refined Product Refund Claims

The Interior and Related Agencies Appropriations Act for FY 1999 amended certain provisions of the Petroleum Overcharge and Distribution and Restitution Act of 1986 (PODRA). These amendments extinguished rights that refund applicants had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Powerine and Storey). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. See Enron Corp./Shelia S. Brown, 27 DOE ¶ 85,036 at 88,244 (2000) (Brown). Congress directed OHA to ''assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants.'' Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999, Pub. L. No. 105–277 § 337, 112 Stat 2681, 2681–295 (1998) (language added to PODRA); Brown, 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary to prorate the funds available for the meritorious claimants in the Powerine and Storey refund proceedings.

It is therefore ordered that:

The payments remitted to the Department of Energy by Powerine Oil Company and Storey Oil Company, Inc., pursuant to remedial orders signed on August 30, 1991 and June 24, 1987 respectively, will be distributed in accordance with the forgoing Decision.

[FR Doc. E7–8771 Filed 5–7–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Efficiency Building Technology Application Centers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Program notice.

SUMMARY: The National Energy Technology Laboratory, on behalf of the Office of Energy Efficiency and Renewable Energy's Building

Technologies Program, intends to issue a Funding Opportunity Announcement (FOA) to select and fund Energy-Efficient Building Technology Application Centers. This FOA is expected to be issued on or about May 15, 2007. The goal of this funding opportunity is to establish geographically and climatically diverse Energy-Efficient Building Technology Application Centers. This goal supports the EERE Strategic Plan to increase the energy efficiency of the Nation's buildings and the Building Technology Program's Technology Validation and Market Introduction activity goal of accelerating the widespread market adoption of energy-efficient building technologies and practices. It also encourages demonstration and commercial application of advanced energy methods and technologies through education and outreach to building and industry professionals, and other individuals and organizations with an interest in efficient energy use.

FOR FURTHER INFORMATION CONTACT: James Rannels, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Program Office EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8070, E-mail: *James.Rannels@ee.doe.gov.*

C. Edward Christy, National Energy Technology Laboratory, 3610 Collins Ferry Road, M/S E–02, Morgantown, WV 26507, (304) 285–4604, E-mail: *Eddie.Christy@netl.doe.gov.*

Dated: May 2, 2007.

C. Edward Christy,

Director, Building and Industrial Technologies Division.

[FR Doc. E7–8788 Filed 5–7–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC07–555–000; FERC–555]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 1, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due July 13, 2007.

ADDRESSES: For more information on the records retention requirements, the public can view the Commission's regulations on the Commission's Web site (*http://www.ferc.gov/legal/maj-ord-reg.asp*) or contacting the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC07–555–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing'', and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOlineSupport@ferc.gov* or toll-free at (866) 208–3676. or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–555 ''Records Retention Requirements'' (OMB No. 1902–0098) is used by the Commission to carry out its responsibilities in implementing the statutory provisions of sections 301, 304 and 309 of the Federal Power Act (FPA) (16 U.S.C. 825, 825c and 825h), sections 8, 10 and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w), and section 20 of the Interstate Commerce Act (ICA, 49 U.S.C. 20).

The regulations for preservation of records establish retention periods, necessary guidelines and requirements to sustain retention of applicable records for the regulated public utilities, natural gas and oil pipeline companies subject to the Commission's jurisdiction. These records will be used by the regulated companies as the basis for their required rate filings and reports for the Commission. In addition, the records will be used by the Commission's audit staff during compliance reviews, by enforcement staff during investigations and for special analyses as deemed necessary by the Commission. The records retained by jurisdictional companies as directed by the Commission are the result of a mandatory requirement.

On January 8, 1999 the Commission issued AI99–2–000, an Accounting Issuance providing guidance on records storage media. Specifically, FERC gave each jurisdictional company the flexibility to select its own storage media. The storage media selected must have a life expectancy equal to the applicable record period unless the quality of the data transferred from one media to another with no loss of data would exceed the record period.

On January 27, 2000, FERC issued a final rule amending its records retention regulations for public utilities and licensees, and natural gas and oil pipeline companies. These changes included revising the general instructions, and shortening various records retention periods. The final rule's objective was to reduce or eliminate burdensome and unnecessary regulatory requirements.

It has been more than seven years since the issuance of the final rule and the accounting guidance, and jurisdictional companies have experienced more than sufficient time to implement these provisions. In responding to this notice, the Commission seeks information on whether jurisdictional companies have obtained substantial reductions in the recordkeeping burden for maintaining their records under the revised retention periods and the use of alternative storage media. Further, the Commission is interested in learning if and what savings were achieved by jurisdictional companies by freeing up storage space formerly used for retaining records. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 125, 225, and 356.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
515	1	2,402	1,237,030

Estimated cost burden to respondents is $141,045. (1,237,030 hours/2080 hours per year times $122,137 per year average per employee = $ 72,638,045). The cost per respondent is $ 141,045).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities, which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8701 Filed 5–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11291–023]

Star Mill, Inc.; Notice of Termination of License by Implied Surrender

May 1, 2007.

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Proceeding Type:* Termination of License by Implied Surrender.

b. *Project No:* 11291–023.

c. *Date Initiated:* October 18, 2006.

d. *Licensee:* Star Mill, Inc.

e. *Name of Project:* Star Milling and Electric Minor Water Power Project (Star Milling).

f. *Location:* On Fawn River in LaGrange County, near the town of Howe, Indiana.

g. *Proceeding Initiated Pursuant to:* 18 CFR 6.4.

h. *FERC Contact:* Diane M. Murray, Telephone: (202) 502–8838 and e-mail: *diane.murray@ferc.gov*.

i. *Deadline for filing comments and or motions:* June 1, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–11291–023) on any comments.

j. *Description of Proceeding:* Because of the licensee's failure to live up to the obligations of its license, the Commission considers this inaction an implied surrender of the license. By letter dated October 18, 2006, the Commission gave the licensee notice of its intent to accept the surrender of the license for the Star Milling Project.

k. *Locations of the Letter:* A copy of the letter is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular proceeding.

n. Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', or ''MOTIONS TO INTERVENE'', as applicable, and the Project Number of the particular proceeding to which the filing refers.

o. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

p. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8702 Filed 5–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

May 1, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–537–002; ER01–538–001.

Applicants: Westmoreland Partners (ROVA I); Westmoreland Partners (ROVA II).

Description: Triennial Updated Market Power Analysis of Westmoreland Partners et al.

Filed Date: 4/30/2007.

Accession Number: 20070430–5204.

Comment Date: 5 p.m. Eastern Time on Monday, May 21, 2007.

Docket Numbers: ER04–374–006; ER05–717–006; ER05–721–006; ER99–2341–008; ER06–230–003; ER06–1334–003; ER07–277–001.

Applicants: Judith Gap Energy LLC; Spring Canyon Energy LLC; Invenergy TN LLC; Hardee Power Partners Limited; Wolverine Creek Energy LLC; Spindle Hill Energy LLC; Invenergy Cannon Falls LLC.

Description: Spring Canyon Energy LLC, Judith Gap Energy LLC, and Invenergy TN LLC submit a notice of change in status under its market-based rate authority.

Filed Date: 4/27/2007.

Accession Number: 20070501–0288.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: ER06–1355–002.

Applicants: Evergreen Wind Power, LLC.

Description: Evergreen Wind Power LLC submit a change in status with respect to the characteristics upon which the Commission previously relied when granting its market-based rate authority and submit an errata on 4/27/07.

Filed Date: 04/25/2007; 04/27/2007.

Accession Number: 20070427–0037; 20070427–5017.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–485–001.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc agent for Alabama Power Company et al submits materials in response to Commission's 3/28/07 letter order.

Filed Date: 4/27/2007.

Accession Number: 20070430–0182.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: ER07–579–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits executed amended and restated generator interconnection agreement with Michigan Electric Transmission Company, LLC et al.

Filed Date: 4/26/2007.

Accession Number: 20070427–0044.

Comment Date: 5 p.m. Eastern Time on Thursday, May 17, 2007.

Docket Numbers: ER07–591–001.

Applicants: Exel Power Sources, LLC.

Description: Exel Power Sources, LLC submits its Petition for acceptance of Initial Tariff, Waivers and Blanket Authority and request for acceptance of FERC Electric Tariff, Original Volume 1 etc.

Filed Date: 4/10/2007.

Accession Number: 20070412–0087.

Comment Date: 5 p.m. Eastern Time on Thursday, May 10, 2007.

Docket Numbers: ER07–705–001.

Applicants: GSG, LLC.

Description: GSG, LLC submits an amendment to its application for Order Accepting Market-Based Rate Tariff, Granting Authorizations and Blanket Authority, and Waiving Certain Requirements.

Filed Date: 4/27/2007.

Accession Number: 20070427–5021.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: ER07–785–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation agent for AEP Operating Companies submits a first revision to the Interconnection and Local Delivery Service agreement 1425 with Village of Plymouth.

Filed Date: 4/25/2007.

Accession Number: 20070426–0170.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–792–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator Inc submits proposed amendments to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff etc.

Filed Date: 4/25/2007.

Accession Number: 20070427–0034.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–793–000.

Applicants: Perryville Energy Partners, L.L.C.

Description: Perryville Energy Partners, LLC informs FERC that it will not file revisions to the Pro Form Open Access Transmission Tariff addressed in the Commission's Order 890 etc.

Filed Date: 4/25/2007.

Accession Number: 20070427–0038.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–794–000.

Applicants: Attala Transmission, LLC.

Description: Attala Transmission LLC informs FERC they will not file the revisions to the pro forma Open Access Transmission Tariff addressed in FERC's Order 890 etc.

Filed Date: 4/25/2007.

Accession Number: 20070427–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 16, 2007.

Docket Numbers: ER07–795–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits informational filing intended to provide notice re the revised transmission Access Changes effective 1/1/07.

Filed Date: 4/26/2007.

Accession Number: 20070427–0033.

Comment Date: 5 p.m. Eastern Time on Thursday, May 17, 2007.

Docket Numbers: ER07–796–000.

Applicants: New England Participating Transmission Owners.

Description: New England Participating Transmission Owners submits proposed revisions to the revenue requirement formulas for transmission services set forth in the Attachment F, Annual Transmission Revenue Requirements etc.

Filed Date: 4/26/2007.

Accession Number: 20070427–0036.

Comment Date: 5 p.m. Eastern Time on Thursday, May 17, 2007.

Docket Numbers: ER07–797–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf of AEP Operating Companies submits the first revision to the Interconnection and Local Delivery Service Agreement with the Village of Wharton.

Filed Date: 4/26/2007.

Accession Number: 20070430–0157.

Comment Date: 5 p.m. Eastern Time on Thursday, May 17, 2007.

Docket Numbers: ER07–798–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf of AEP Operating Companies submits the first revision to the Interconnection and Local Delivery Service Agreement with the City of Clyde.

Filed Date: 4/26/2007.

Accession Number: 20070430–0158.

Comment Date: 5 p.m. Eastern Time on Thursday, May 17, 2007.

Docket Numbers: ER07–799–000.

Applicants: Norwalk Power LLC.

Description: Norwalk Power LLC submits unexecuted cost-of-service agreement with NRG Power Marketing Inc and ISO New England Inc.

Filed Date: 4/26/2007.

Accession Number: 20070430–0188.

Comment Date: 5 p.m. Eastern Time on Thursday, May 17, 2007.

Docket Numbers: ER07–800–000.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corporation, as designated agent for AEP Operating Companies submits a first revision to the Interconnection & Local Delivery Service Agreement 1419 with Village of Cary.

Filed Date: 4/26/2007.

Accession Number: 20070430–0160.

Comment Date: 5 p.m. Eastern Time on Thursday, May 17, 2007.

Docket Numbers: ER07–801–000.

Applicants: Wisconsin Electric Power Company.

Description: Letter to Remove Umbrella Agreements by Wisconsin Electric Power Company under ER07–801.

Filed Date: 4/18/2007.

Accession Number: 20070418–5020.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 9, 2007.

Docket Numbers: ER07–802–000.

Applicants: MEP Clarksdale Power, LLC.

Description: MEP Clarksdale Power, LLC submits a notice of cancellation of its FERC Electric Tariffs.

Filed Date: 4/27/2007.

Accession Number: 20070430–0159.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: ER07–803–000.

Applicants: Consolidated Edison Co. of New York, Inc.

Description: Consolidated Edison Company of New York, Inc submits the Revised and Restated Interconnection Agreement with the Power Authority of the State of New York, dated 5/1/07.

Filed Date: 4/27/2007.

Accession Number: 20070430–0196.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 8, 2007.

Docket Numbers: ER07–804–000.

Applicants: Xcel Energy Operating Companies.

Description: Xcel Energy Services, Inc submits the Master Transmission to Load Interconnection Agreement between Northern States Power Co and Great River.

Filed Date: 4/27/2007.

Accession Number: 20070430–0185.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: ER07–813–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits its proposed revisions to Sheet 207 of the Midwest ISO's Open Access Transmission and Energy Markets Tariff.

Filed Date: 4/23/2007.

Accession Number: 20070425–0161.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–33–000.

Applicants: Entergy Mississippi, Inc.

Description: Form 523—Application of Entergy Mississippi, Inc. for Authorization to issue and sell preferred stock and long-term debt securities during the two-year period ending 6/30/99.

Filed Date: 04/30/2007.

Accession Number: 20070430–5037.

Comment Date: 5 p.m. Eastern Time on Monday, May 21, 2007.

Docket Numbers: ES07–34–000.

Applicants: System Energy Resources, Inc.

Description: Form 523—Application of System Energy Resources, Inc. for authorization to issue and sell long-term securities during two-year period ending June 30, 2009.

Filed Date: 4/30/2007.

Accession Number: 20070430–5039.

Comment Date: 5 p.m. Eastern Time on Monday, May 21, 2007.

Docket Numbers: ES07–35–000.

Applicants: Entergy Gulf States Louisiana, L.L.C.

Description: Application by Entergy Gulf States Louisiana, L.L.C. for Authorization to Issue Securities in ES07–35.

Filed Date: 4/30/2007.

Accession Number: 20070430–5116.

Comment Date: 5 p.m. Eastern Time on Monday, May 21, 2007.

Docket Numbers: ES07–36–000.

Applicants: Entergy Texas, Inc.

Description: Application by Entergy Texas, Inc. for Authorization to Issue Securities in ES07–36.

Filed Date: 4/30/2007.

Accession Number: 20070430–5120.

Comment Date: 5 p.m. Eastern Time on Monday, May 21, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH0711–000.

Applicants: General Electric Company; General Electric Capital Services, Inc.; General Electric Capital Corporation; General Electric Credit Corporation of Tennessee; EFS Cogen Holdings I LLC; East Coast Power, LLC; East Coast Power Linden Holdings, LLC; East Coast Power Linden, Inc.; East Coast Power Linden GP, LLC; Linden VFT Holding, LLC; GE Structured Finance Inc.; GPSF Securities, Inc.; GESF Birchwood-GP LLC; Aircraft Services Corporation; EFS–SSCC Holdings, Inc.; Fox Energy OP, L.P.; GE Capital CALGEN; GE Energy Holdings, Inc; SFG–J Inc.; Lake Benton Power Associates LLC; Lake Benton Holdings LLC; SFG–M Inc.; Storm Lake II Power Associates LLC; Storm Lake II Holdings LLC; Source Gas Holdings LLC; Southern Star Central Corp.

Description: FERC Form 65 A Exemption Notification of General Electric Energy Financial Services.

Filed Date: 4/27/2007.

Accession Number: 20070427–5053.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an

eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8731 Filed 5–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–445]

South Carolina Electric & Gas Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 1, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Transfer Interests in Project Lands.

b. *Project No:* 516–445.

c. *Date Filed:* April 16, 2007.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* The project is located on the Saluda and Congaree Rivers, in Lexington, Newberry, Richland, and Saluda Counties, South Carolina. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. J. Hagood Hamilton, Senior Counsel, SCANA Corporation, Columbia, SC 29218, Telephone (803) 217–8938, e-mail *hhamilton@scana.com.*

i. *FERC Contact:* Christopher Yeakel, Telephone (202) 502–8132, and e-mail: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* June 1, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee proposes to transfer fee simple interest in a 36 acre tract of land located within the project boundary along the western bank of the Saluda River in Newberry County, South Carolina, southwest of the intersection of routes 34 and 121 at the Deadfall Crossroads. In exchange for the interest in the 36 acre tract, the licensee will receive fee title to a tract of land 150 feet wide and approximately 1.25 miles long, running adjacent to the western bank of the Saluda River, to which the licensee currently only has flowage rights.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–516–445).

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8699 Filed 5–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–8–000]

Guardian Pipeline, L.L.C; Notice of the Change in Location of the Public Comment Meetings for the Guardian Expansion and Extension Project Draft Environmental Impact Statement

May 1, 2007.

On April 13, 2007, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a draft

Environmental Impact Statement (EIS) for the Guardian Expansion and Extension Project, proposed by Guardian Pipeline, L.L.C. Issuance of the draft EIS began a 45-day public comment period which will end on May 29, 2007. In addition to accepting written comments on the draft EIS, the Commission staff will be hosting public comment meetings in the project area to accept oral comments as listed in the following table.

Public meeting date and time	Location
Tuesday, May 15, 2007 at 7 p.m. (CST)	Olympia Resort and Conference Center, 1350 Royale Mile Road, Oconomowoc, WI 53066, Phone: (262) 369–4999.
Wednesday, May 16, 2007 at 7 p.m. (CST)	Bauer Ramada Plaza Hotel, 1 North Main St., Fond du Lac, WI 54935, Phone: (920) 923–3000.
Thursday, May 17, 2007 at 7 p.m. (CST)	Regency Suites and Conference Center Downtown Green Bay, 333 Main St., Green Bay, WI 54301, Phone: (920) 432–4555.

Comment Procedure

Instructions for submitting written comments are included in the draft EIS and the Notice of Availability that were issued on April 13, 2007. These documents can be found on the FERC Internet Web site as discussed below. Oral comments presented at the public comment meetings will be given the same consideration as written comments received by mail before the close of the public comment period on May 29, 2007.

As with previous public meetings on the Guardian Expansion and Extension Project, attendees will be asked to provide their name and address so that any project-related environmental information issued by the Commission may be mailed to all attendees. Additionally, those wishing to provide oral comments will be asked to put their name on a Speakers List. Depending on the number of individuals wishing to provide oral comments, speakers may be asked to limit their presentations to 5 minutes in order that all speakers may be accommodated. Transcripts of the public comment meetings will be prepared and placed into the FERC's public record.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8703 Filed 5–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–8–006]

Revised Public Utility Filing Requirements for Electric Quarterly Reports

April 23, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice Seeking Comments on Proposed Electric Quarterly Report (EQR) Data Dictionary.

SUMMARY: In this notice, the Federal Energy Regulatory Commission (Commission) proposes to adopt an EQR Data Dictionary to define the terms and values used in filing EQR data, and invites comments on this proposal.

DATES: Comments on the proposal are due June 7, 2007.

ADDRESSES: You may submit comments on the proposal, identified by Docket No. RM01–8–006, by one of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Michelle Veloso (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8363.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

1. The Commission is proposing to adopt an Electric Quarterly Report (EQR) Data Dictionary that will define the terms and values used in filing EQR data.[1] In this notice, the Commission attaches a draft EQR Data Dictionary and invites comment on whether this document should be adopted or modified.

Background

2. On April 25, 2002, the Commission issued Order No. 2001, a final rule establishing revised public utility filing requirements.[2] This rule revised the Commission's filing requirements to require companies subject to the Commission's regulation under section 205 of the Federal Power Act (public utilities) to file quarterly reports that: (1) Provide data identifying the utility on whose behalf the report is being filed (ID Data); (2) summarize pertinent data about the utility's currently effective contracts (Contract Data); and (3) summarize data about wholesale power sales the utility made during the reporting period (Transaction Data). The requirement to file EQRs replaced the requirement to file quarterly transaction

[1] We are also proposing to change three field names to reflect terminology adopted by the North American Electric Reliability Corporation (NERC) in 2005. We are not proposing any other changes to field names. All other proposed changes are to the definitions of terms and values used for EQR filings.

[2] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001–C, 101 FERC ¶ 61,314 (2002).

reports summarizing a utility's market-based rate transactions and sales agreements that conformed to the utility's tariff.

3. In Order No. 2001, the Commission also adopted a new section in its regulations, 18 CFR 35.10b, which requires that the EQRs are to be prepared in conformance with the Commission's software and guidance posted and available from the Commission website. This obviates the need to revise section 35.10b to implement revisions to the software and guidance. Since the issuance of Order No. 2001, as need has arisen, the Commission has issued orders to resolve questions raised by EQR users and has directed Staff to issue additional guidance. For example, in a pair of orders issued on May 31 and October 21, 2002, the Commission provided guidance describing how EQR filers were to complete several data fields in the EQR software.[3]

4. Likewise, on December 23, 2003, the Commission issued Order No. 2001–E, to resolve some recurring issues faced by EQR filers, to help filers better understand the requirements of Order No. 2001, and to improve the quality and consistency of EQR data.[4] To this end, the Commission: (1) Ordered standard formats to be used for certain location fields; (2) established an EQR Refiling Policy; and (3) streamlined and defined allowable data entries in certain data fields. The Commission instructed Staff to issue filing guidance to address these changes.[5] This guidance was posted on the EQR page of the Commission's website on March 25, 2004.[6] Commission Staff posted additional guidance on the Internet at the *http://www.ferc.gov* Web site, and several EQR Users Group meetings have been held to address the questions of EQR filers.

5. After Order No. 2001–E, the Commission recognized that rapid change in the electric industry may require flexibility in adding or changing the entries allowed in restricted fields in the EQR. NERC, for example, frequently adds and deletes balancing authorities (previously ''control areas'') from its Transmission System Information Network rolls. In an order issued on March 25, 2004, the Commission directed Staff to alert EQR users of any future changes to allowable entries for restricted fields by e-mail, and to post these changes on the EQR page of the Commission's Web site.[7]

6. Since 2004, the Commission has performed outreach to the industry to determine which current EQR definitions are sufficient and understandable and which should be revised. As relevant here, on November 8, 2006, the Commission issued a public notice announcing that Staff was convening a meeting of the EQR Users Group to discuss a Staff draft EQR Data Dictionary.[8] In preparation for that meeting, Staff compiled existing definitions contained in previous orders and Commission issuances.[9] In addition, Staff suggested revisions and refinements to these definitions based on more than four years of experience reviewing EQR filings, responding to questions from EQR filers, and discussions with the EQR Users Group. Many of the revisions and refinements were intended to codify Staff guidance provided over the years to clarify companies' EQR filing obligations. Staff made its draft EQR Data Dictionary available to interested persons before the meeting.[10]

7. Almost 200 people registered to attend the November 29, 2006, meeting (either in person or via teleconference) and many who attended participated in the discussion of the issues. Participants were invited to file comments on the Staff draft EQR Data Dictionary by January 12, 2007. Occidental Power Services, Inc., Southern California Edison Company, and Edison Electric Institute (EEI) filed written comments.

Discussion

8. To improve the quality of EQR filings, the Commission has determined that it would be appropriate to issue formal definitions for those fields that are currently undefined. A common, documented basis for the definition of the terms and values in the EQR will provide the Commission with more reliable and understandable information related to the contracts and transactions reported. Further, a common EQR language will create greater regulatory certainty for companies responsible for filing the EQR.

9. The proposed EQR Data Dictionary compiles all the terms used in the EQR, as they have evolved since the issuance of Order No. 2001, into an organized reference for filers and public use. Specifically, the proposed EQR Data Dictionary (Attachment A) provides the terms and values used to file the EQR. It includes terms that were not previously defined except through Staff guidance. In general, the definitions and descriptions are consistent with those provided since the issuance of Order No. 2001. The underlying structure of the EQR will remain unchanged.

10. The text of this notice and Attachment B point out the instances where the proposed definitions vary from those used in prior Commission orders. Attachment B is provided on an informational basis only, to aid commenters in identifying revisions. Comments should only be addressed to the proposed EQR Data Dictionary in Attachment A.

11. The proposed EQR Data Dictionary revises the definitions provided in previous Commission orders for the following terms:

- *ID Data:* Company Name—Respondent (Field Number 2); Company Name—Seller (Field Number 2); Company Name—Agent (Field Number 2); Company DUNS Number—Respondent (Field Number 3); Company DUNS Number—Seller (Field Number 3); Company DUNS Number—Agent (Field Number 3); Contact Country Name (Field Number 10); and Filing Quarter (Field Number 13).
- *Contract Data:* Seller Company Name (Field Number 15); Customer Company Name (Field Number 16); Customer DUNS Number (Field Number 17); Contract Affiliate (Field Number 18); FERC Tariff Reference (Field Number 19); Contract Service Agreement ID (Field Number 20); Contract Execution Date (Field Number 21); Contract Commencement Date (Field Number 22); Contract Termination Date (Field Number 23); Extension Provision Description (Field Number 25); Term Name (Field Number 27); Product Name (Field Number 31); Quantity (Field Number 32); Units (Field Number 33); Rate (Field Number 34); Rate Units (Field Number 38); Point of Receipt Balancing Authority (Field Number 39); Point of Receipt Specific Location (Field Number 40); Point of Delivery Balancing Authority (Field Number 41); Point of Delivery Specific Location (Field Number 42); Begin Date (Field Number 43); and End Date (Field Number 44).

[3] *Revised Public Utility Filing Requirements*, 99 FERC ¶ 61,238 (2002); *Revised Public Utility Filing Requirements*, 67 FR 65973 (Oct. 29, 2002), FERC Stats. & Regs. ¶ 35,045 (Oct. 21, 2005).

[4] Revised Public Utility Filing Requirements, Order No. 2001-E, 105 FERC ¶ 61,352 (2003).

[5] *Id.* at P 8.

[6] Posted at *http://www.ferc.fed.us/docs-filing/eqr/com-order.asp.*

[7] *Revised Public Utility Filing Requirements*, 106 FERC ¶ 61,281 (2004).

[8] *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, Notice of Electric Quarterly Reports User's Group Meeting, Nov. 8, 2006.

[9] *See* Staff Draft of the EQR Data Dictionary, posted on the EQR Users Group and Workshops page on FERC.gov at *http://www.ferc.gov/docs-filing/eqr/groups-workshops.asp.*

[10] *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, Notice of Electric Quarterly Reports User's Group Meeting, 71 FR 69111 (Nov. 29, 2006).

• *Transaction Data:* Seller Company Name (Field Number 47); Customer Company Name (Field Number 48); Customer DUNS Number (Field Number 49); FERC Tariff Reference (Field Number 50); Contract Service Agreement ID (Field Number 51); Transaction Begin Date (Field Number 53); Transaction End Date (Field Number 54); Point of Delivery Balancing Authority (Field Number 56); Point of Delivery Specific Location (Field Number 57); Term Name (Field Number 59); Product Name (Field Number 62); Transaction Quantity (Field Number 62); Price (Field Number 64); Rate Units (Field Number 65); Total Transmission Charge (Field Number 66); and Total Transaction Charge (Field Number 67).

12. The proposed EQR Data Dictionary also adds definitions for terms not previously defined by Commission order, including:

• *ID Data:* Filer Unique Identifier (Field Number 1).

• *Contract Data:* Contract Unique ID (Field Number 14); Class Name (Field Number 26); Increment Name (Field Number 28); Increment Peaking Name (Field Number 29); Product Type Name (Field Number 30); and Time Zone (Field Number 45).

• *Transaction Data:* Transaction Unique ID (Field Number 46); Time Zone (Field Number 55); Class Name (Field Number 58); Increment Name (Field Number 60); and Increment Peaking Name (Field Number 61).

13. The proposed EQR Data Dictionary makes the following key revisions to the existing EQR definitions:

• The definitions of the identifiers used at the beginning of each record in the comma-delimited import files (Field Numbers 1, 14 and 60) have been expanded to clarify their function.

• The definitions of the ID Data fields have been expanded to link each of the fields to the appropriate filer identified in Field Numbers 1 and 2.

• The definition of ''FERC Tariff Reference'' reported in the Contract Data (Field Number 19) and Transaction Data (Field Number 50) permits references other than the filing company's own FERC tariff where sales occur under Commission-approved, cost-based rate schedules for certain power pools.

• The definition of ''Contract Service Agreement ID'' reported in the Contract Data (Field Number 20) and in the Transaction Data (Field Number 51) allows an ''internal identification system'' as opposed to a ''numbering'' system to allow for the inclusion of non-numeric characters in the identifiers.

• The definitions of ''Class Name, F-Firm'' and ''Class Name, NF-Non-Firm'' reported in the Contract Data (Field Number 26) and the Transaction Data (Field Number 58) provide two definitions, to differentiate between firm transmission service and firm power sales.[11]

• The definitions of the allowable entries for ''Term Name'' reported in the Contract Data (Field Number 27) and in the Transaction Data (Field Number 59) are being expanded. While EQR filers have indicated a preference that the definitions for power sales and transmission be differentiated, the Commission is striving to create consistency for uses of ''long term'' and ''short term,'' across its programs.[12] Therefore, we propose to define ''Term Name'' in the same way for both power and transmission sales.

• The definitions of ''Increment Peaking Name, OP-Off-Peak'' and ''Increment Peaking Name, P-Peak'' reported in the Contract Data (Field Number 29) and the Transaction Data (Field Number 61) specify that the ''relevant NERC region'' was the ''NERC region of the point of delivery.''

• The definition of ''Increment Peaking Name, N/A-Not Applicable'' in the Contract Data (Field Number 29) indicates that ''N/A'' is an acceptable entry if the contract does not specify the increment peaking period for the sale. The definition of ''Increment Peaking Name, N/A-Not Applicable'' in the Transaction Data (Field Number 61) indicates that ''N/A'' is an acceptable entry only when other available increment peaking names do not apply. ''N/A'' will not be acceptable for products such as ''Energy,'' ''Booked Out Power,'' ''Capacity,'' or ''Ancillary Services.''

• The definitions of ''Product Type Name, CB-Cost-Based'' and ''Product Type Name, MB-Market-Based'' reported in the Contract Data (Field Number 30) specify ''energy or capacity sold'' under the seller's FERC-approved tariffs. This change allows filers to differentiate these product types from ''Product Type Name, T-Transmission,'' which applies to cost-based or market-based transmission-related services.

• The definition of ''Product Type Name, S-Service'' in the Contract Data (Field Number 30) has been deleted to remove ambiguity regarding the types of products that must be reported.

• The name and definition of ''Point of Receipt Control Area'' reported in the Contract Data (Field Number 39) has been revised to ''Point of Receipt Balancing Authority'' in response to changes in terminology implemented by NERC beginning April 1, 2005.

• The name and definition of ''Point of Delivery Control Area'' reported in the Contract Data (Field Number 41) and in the Transaction Data (Field Number 56) has been revised to ''Point of Delivery Balancing Authority'' in response to changes in terminology implemented by NERC beginning April 1, 2005.

• The continued requirement to fill certain Contract Data fields—Contract Termination Date (Field Number 23); Quantity (Field Number 32); Units (Field Number 33); Rate Units (Field Number 38); Point of Receipt Balancing Authority (PORBA) (Field Number 39); Point of Receipt Specific Location (PORSL) (Field Number 40); Point of Delivery Balancing Authority (PODBA) (Field Number 41); Point of Delivery Specific Location (PODSL) (Field Number 42); Begin Date (Field Number 43) and End Date (Field Number 44)—has been clarified to be contract-specific. The EQR may still be filed if these fields are left empty, but the public utility has the obligation to complete the fields if the relevant terms are included in the contract.[13]

• The ''Product Name'' (Attachment A, Appendix A) in the Contract Data (Field Number 31), ''Capacity Reassignment,'' has been added to address a new EQR reporting requirement required by Order No. 890.[14]

• The ''Product Names'' (Attachment A, Appendix A) in the Contract Data (Field Number 31), ''Regulation & Frequency Response,'' ''Spinning Reserve,'' and ''Supplemental Reserve'' have been modified to address changes in the OATT in Order No. 890.

• The ''Product Name'' (Attachment A, Appendix A) in the Contract Data

[11] These definitions are intended to be consistent with NERC and the pro forma Open Access Transmission Tariff (OATT) definitions and Commission precedent. *See, e.g., Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 at P 1452–55, P 1539 and P 1688–92 (Feb. 16, 2007) (Order No. 890). However, as explained below, *infra* P 21, these definitions only govern the manner in which these items are reported in the EQR.

[12] *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, notice of proposed rulemaking, 71 FR 33102 (Jun. 7, 2006), FERC Stats. & Regs. ¶ 32,602 at P 137 (May 19, 2006). Also, the Commission is aware of inconsistencies in these definitions with the FERC Form 1 and is in the process of reviewing comments in *Assessments of Information Requirements for FERC Financial Forms*, notice of inquiry, 72 FR 8316 (Feb. 15, 2007).

[13] As pointed out above, *supra* note 1, to be consistent with NERC terminology, the proposed Data Dictionary uses the field name ''PORBA'' (previously ''PORCA'' and ''PODBA'' (previously ''PODCA'').

[14] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at note 499.

(Field Number 31), ''Exchange Agreement,'' has been revised to ''Exchange'' and incorporated into the allowable product names in the Transaction Data (Field Number 62). This change will make it easier to identify sales under exchange agreements and adjust for their effects when reviewing product prices.

- The ''Product Name'' (Attachment A, Appendix A) in the Contract Data (Field Number 31 and Field Number 62), ''Transmission Owners Agreement,'' has been revised to expand the definition beyond agreements with ISOs.

14. Two fields merit specific discussion. The Increment Name fields (Field Number 28 of the Contract Data and Field Number 60 of the Transaction Data) are intended to provide insight into the duration of the agreement under which a sale is being made. To compare sales in the EQR appropriately, we must be able to understand the duration of the underlying transaction that resulted in each sale. On a single day in a given market, prices for power under terms set at the beginning of a month may differ from hourly prices determined through an RTO or ISO in its real time market. The Increment Name fields provide a basis to understand price differentiation among otherwise similarly situated sales.

15. The proposed EQR Data Dictionary includes definitions of Increment Names that offer more clarity and allow the fields to be automatically calculated. These definitions lay out specific time periods for each of the restricted values.

16. Deals covering peak periods or off-peak periods (as identified in the Increment Peaking Name fields) are commonly characterized as daily, rather than as hourly transactions, even though they last less than 24 hours.[15] For this reason, the proposed EQR Data Dictionary defines ''D-Daily'' transactions as those under deals that last over six and up to and including thirty-six hours to ensure that both peak and off-peak blocks for a single day are included.

17. Hourly deals, such as sales to ISOs, are characterized with terms shorter than the daily deals. Under the proposed EQR Data Dictionary deals of up to, and including, six hours would be reported as ''H-Hourly.''

18. Transactions that cover blocks of hours over the course of a week (commonly identified in the industry by such terms as ''5x16'' or ''2x24'') are characterized as weekly transactions.[16] Sales under deals of over 36 and up to and including 168 hours (seven days) are defined in the proposed EQR Data Dictionary as ''W-Weekly'' deals. Deals over a week (168 hours) and up to and including one month would be reported as ''M-Monthly.'' Deals of a year or more (including sales where precise terms are set in a long-term contract) will be reported as ''Y-Yearly.'' We also propose a new ''S-Seasonal'' value to be used to characterize power sales that are made for longer than one month but less than a year, such as sales for the duration of a peak season.

19. In the Contracts tab, the Increment Name field (Field Number 28) has descriptive value for those contracts that lay out the specific terms (price, quantity, and period) of the arrangement. Contracts that do not contain these specific terms should be described using ''N/A.''

20. Also, in Order No. 890, the Commission addressed the issue of what constitutes a sufficient level of firmness to be eligible for designation as a network resource.[17] We invite comments on whether the definitions of Class Names, ''Firm'' and ''Non-Firm'' (Field Numbers 26 and 58), need revision.

21. Subject to our review of any comments filed in response to this notice, the Commission plans to adopt the EQR Data Dictionary shown in Attachment A to this notice. We expect that these definitions would take effect the first day of the first new quarter after issuance of a Final Order. We caution that the definitions we are proposing in the EQR Data Dictionary are only intended to govern the manner in which these items are reported in the EQR and are not intended to be precedent in other contexts.

Comment Procedures

22. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 7, 2007. Comments must refer to Docket No. RM01–8–006, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

23. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

24. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

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

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

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

By direction of the Commission.

Kimberly D. Bose,

Secretary.

Note: The following attachments (A) and (B) will not appear in the Code of Federal Regulation.

Attachment A

Electric Quarterly Report Data Dictionary

Version 1.0 (issued —)

[15] These deals would be reported in Field Number 29 of Contract Data and in Field Number 61 of Transaction Data.

[16] ''5x16'' (5 days × 16 hours) refers to a peak hour weekly deal and ''2 × 24'' (2 days x 24 hours) refers to a weekend deal.

[17] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1452–55.

EQR DATA DICTIONARY

[ID Data]

Field No.	Field	Required	Value	Definition
1	Filer Unique Identifier	✓	FR1	(Respondent)—An identifier (i.e., "FR1") used to designate a record containing Respondent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FR1 identifier may be imported into an EQR for a given quarter.
1	Filer Unique Identifier	✓	FS# (where "#" is an integer).	(Seller)—An identifier (e.g., "FS1", "FS2") used to designate a record containing Seller identification information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each seller company may be imported into an EQR for a given quarter.
1	Filer Unique Identifier	✓	FA1	(Agent)—An identifier (i.e., "FA1") used to designate a record containing Agent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FA1 identifier may be imported into an EQR for a given quarter.
2	Company Name	✓	Unrestricted text (70 characters).	(Respondent)—The name of the company taking responsibility for complying with the Commission's regulations related to the EQR.
2	Company Name	✓	Unrestricted text (70 characters).	(Seller)—The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Company Name of the Respondent.
2	Company Name	✓	Unrestricted text (70 characters).	(Agent)—The name of the entity completing the EQR filing. The Agent's Company Name need not be the name of the company under Commission jurisdiction.
3	Company DUNS Number.	For Respondent and Seller.	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 2.
4	Contact Name	✓	Unrestricted text (50 characters).	(Respondent)—Name of the person at the Respondent's company taking responsibility for compliance with the Commission's EQR regulations.
4	Contact Name	✓	Unrestricted text (50 characters).	(Seller)—The name of the contact for the company authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Contact Name of the Respondent.
4	Contact Name	✓	Unrestricted text (50 characters).	(Agent)—Name of the contact for the Agent, usually the person who prepares the filing.
5	Contact Title	✓	Unrestricted text (50 characters).	Title of contact identified in Field Number 4.
6	Contact Address	✓	Unrestricted text	Street address for contact identified in Field Number 4.
7	Contact City	✓	Unrestricted text (30 characters).	City for the contact identified in Field Number 4.
8	Contact State	✓	Unrestricted text (2 characters).	Two character state or province abbreviations for the contact identified in Field Number 4.
9	Contact Zip	✓	Unrestricted text (10 characters).	Zip code for the contact identified in Field Number 4.
10	Contact Country Name	✓	CA–Canada, MX–Mexico, US–United States, UK–United Kingdom.	Country (USA, Canada, Mexico, or United Kingdom) for contact address identified in Field Number 4.
11	Contact Phone	✓	Unrestricted text (20 characters).	Phone number of contact identified in Field Number 4.
12	Contact E-Mail	✓	Unrestricted text	E-mail address of contact identified in Field Number 4.
13	Filing Quarter	✓	YYYYMM	A six digit reference number used by the EQR software to indicate the quarter and year of the filing for the purpose of importing data from csv files. The first 4 numbers represent the year (e.g., 2007). The last 2 numbers represent the last month of the quarter (e.g., 03 = 1st quarter; 06 = 2nd quarter, 09 = 3rd quarter, 12 = 4th quarter).

EQR DATA DICTIONARY—Continued

[ID Data]

Field No.	Field	Required	Value	Definition
14	Contract Unique ID	✓	An integer proceeded by the letter "C" (only used when importing contract data).	An identifier beginning with the letter "C" and followed by a number (e.g., "C1", "C2") used to designate a record containing contract information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each contract product may be imported into an EQR for a given quarter.
15	Seller Company Name	✓	Unrestricted text (70 characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's "Company Name" in Field Number 2 of the ID Data (Seller Data).
16	Customer Company Name.	✓	Unrestricted text (70 characters).	The name of the counterparty to the contract.
17	Customer DUNS Number.	✓	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 16.
18	Contract Affiliate	✓	Y (Yes) N (No)	The customer is an affiliate if it controls, is controlled by or is under common control with the seller. This includes a division that operates as a functional unit. A customer of a seller who is an Exempt Wholesale Generator may be defined as an affiliate under the Public Utility Holding Company Act and the FPA.
19	FERC Tariff Reference	✓	Unrestricted text (60 characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales or power sales at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
20	Contract Service Agreement ID.	✓	Unrestricted text (30 characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed with and accepted by the Commission, or it may be generated as part of an internal identification system.
21	Contract Execution Date	✓	YYYYMMDD	The date the contract was signed. If the parties signed on different dates, or there are contract amendments, use the most recent date signed.
22	Contract Commencement Date.	✓	YYYYMMDD	The date the contract was effective. If it is not specified in the contract, the first date of service under the contract.
23	Contract Termination Date.	If specified in the contract.	YYYYMMDD	The date that the contract expires.
24	Actual Termination Date	If contract terminated	YYYYMMDD	The date the contract actually terminates.
25	Extension Provision Description.	✓	Unrestricted text	Description of terms that provide for the continuation of the contract.
26	Class Name	✓		See definitions of each class name below.
26	Class Name	✓	F—Firm	For transmission sales, service or product that always has priority over non-firm service. For power sales, service or product that is not interruptible for economic reasons.
26	Class Name	✓	NF—Non-firm	For transmission sales, service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to firm service. An energy sale for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
26	Class Name	✓	UP—Unit Power Sale	Designates a dedicated sale of energy and capacity from one or more than one generation unit(s).
26	Class Name	✓	N/A—Not Applicable	To be used only when the other available Class Names do not apply.

EQR DATA DICTIONARY—Continued

[ID Data]

Field No.	Field	Required	Value	Definition
27	Term Name	✓	LT—Long Term, ST—Short Term, N/A—Not Applicable.	Contracts with durations of one year or greater are long-term. Contracts with shorter durations are short-term.
28	Increment Name	✓		See definitions for each increment below.
28	Increment Name	✓	H—Hourly	Terms of the contract (if specifically noted in the contract) set for up to 6 consecutive hours (= 6 consecutive hours).
28	Increment Name	✓	D—Daily	Terms of the contract (if specifically noted in the contract) set for more than 6 and up to 36 consecutive hours (≤6 and = 36 consecutive hours).
28	Increment Name	✓	W—Weekly	Terms of the contract (if specifically noted in the contract) set for over 36 consecutive hours and up to 168 consecutive hours (≤36 and = 168 consecutive hours).
28	Increment Name	✓	M—Monthly	Terms of the contract (if specifically noted in the contract) set for more than 168 consecutive hours up to one month (>168 consecutive hours and ≤ 1 month).
28	Increment Name	✓	Y—Yearly	Terms of the contract (if specifically noted in the contract) set for one year or more (≥1 year).
28	Increment Name	✓	S—Seasonal	Terms of the contract (if specifically noted in the contract) set for greater than one month and less than 365 consecutive days (> 1 month and < 1 year).
28	Increment Name	✓	N/A—Not Applicable	Terms of the contract do not specify an increment.
29	Increment Peaking Name.	✓		See definitions for each increment peaking name below.
29	Increment Peaking Name.	✓	FP—Full Period	The product described may be sold during all hours under the contract.
29	Increment Peaking Name.	✓	OP—Off-Peak	The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery.
29	Increment Peaking Name.	✓	P—Peak	The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery.
29	Increment Peaking Name.	✓	N/A—Not Applicable	To be used only when the increment peaking name is not specified in the contract.
30	Product Type Name	✓		See definitions for each product type below.
30	Product Type Name	✓	CB—Cost Based	Energy or capacity sold under a FERC-approved cost-based rate tariff.
30	Product Type Name	✓	MB—Market Based	Energy sold under the seller's FERC-approved market-based rate tariff.
30	Product Type Name	✓	T—Transmission	The product is sold under a FERC-approved transmission tariff.
30	Product Type Name	✓	Other	The product cannot be characterized by the other product type names.
31	Product Name	✓	See Product Name Table, Appendix A..	Description of product being offered.
32	Quantity	If specified in the contract.	Number with up to 4 decimals.	Quantity for the contract product identified.
33	Units	If specified in the contract.	See Units Table, Appendix E.	Measure stated in the contract for the product sold.
34	Rate	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	The charge for the product per unit as stated in the contract.
35	Rate Minimum	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Minimum rate to be charged per the contract, if a range is specified.
36	Rate Maximum	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Maximum rate to be charged per the contract, if a range is specified.
37	Rate Description	One of four rate fields (34, 35, 36, or 37) must be included.	Unrestricted text	Text description of rate. May reference FERC tariff, or, if a discounted or negotiated rate, include algorithm.
38	Rate Units	If specified in the contract.	See Rate Units Table, Appendix F.	Measure stated in the contract for the product sold.

EQR DATA DICTIONARY—Continued

[ID Data]

Field No.	Field	Required	Value	Definition
39	Point of Receipt Balancing Authority (PORBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications or "Hub" if point of receipt is at a restricted trading hub.
40	Point of Receipt Specific Location (PORSL).	If specified in the contract.	Unrestricted text (50 characters). If "HUB" is selected for PORCA, see Hub Table, Appendix C.	The specific location at which the product is received if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used.
41	Point of Delivery Balancing Authority(PODBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications or "Hub" if point of receipt is at a restricted trading hub.
42	Point of Delivery Specific Location (PODSL).	If specified in the contract.	Unrestricted text (50 characters). If "HUB" is selected for PODCA, see Hub Table, Appendix C.	The specific location at which the product is delivered if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used.
43	Begin Date	If specified in the contract.	YYYYMMDDHHMM	First date for the sale of the product at the rate specified.
44	End Date	If specified in the contract.	YYYYMMDDHHMM	Last date for the sale of the product at the rate specified.
45	Time Zone	✓	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.

EQR DATA DICTIONARY

[Transaction Data]

Field No.	Field	Required	Value	Definition
46	Transaction Unique ID	✓	An integer proceeded by the letter "T" (only used when importing transaction data).	An identifier beginning with the letter "T" and followed by a number (e.g. "T1", "T2") used to designate a record containing transaction information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each transaction record may be imported into an EQR for a given quarter. A new transaction record must be used every time a price changes in a sale.
47	Seller Company Name	✓	Unrestricted text (70 Characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's "Company Name" in Field 2 of the ID Data (Seller Data).
48	Customer Company Name	✓	Unrestricted text (70 Characters).	The name of the counterparty to the contract.
49	Customer DUNS Number	✓	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the counterparty to the contract.
50	FERC Tariff Reference	✓	Unrestricted text (60 Characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales or power sales at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
51	Contract Service Agreement ID.	✓	Unrestricted text (30 Characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it may be generated as part of an internal identification system.
52	Transaction Unique Identifier	✓	Unrestricted text (24 Characters).	Unique reference number assigned by the seller for each transaction.
53	Transaction Begin Date	✓	YYYYMMDDHHMM (csv import). MMDDYYYYHHMM (manual entry).	First date and time the product is sold during the quarter at the specified price.
54	Transaction End Date	✓	YYYYMMDDHHMM (csv import).	Last date and time the product is sold during the quarter at the specified price.

EQR DATA DICTIONARY—Continued

[Transaction Data]

Field No.	Field	Required	Value	Definition
			MMDDYYYYHHMM (manual entry).	
55	Time Zone	✓	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.
56	Point of Delivery Balancing Authority (PODBA).	✓	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications.
57	Point of Delivery Specific Location (PODSL).	✓	Unrestricted text (50 characters). If "HUB" is selected for PODBA, see Hub Table, Appendix C.	The specific location at which the product is delivered. If receipt occurs at a trading hub, a standardized hub name must be used.
58	Class Name	✓		See class name definitions below.
58	Class Name	✓	F—Firm	For transmission sales, service or product that always has priority over non-firm service. For power sales, service or product that is not interruptible for economic reasons.
58	Class Name	✓	NF—Non-firm	For transmission sales, service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to firm transmission service. An energy sale for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
58	Class Name	✓	UP—Unit Power Sale	Designates a dedicated sale of energy and capacity from one or more than one generation unit(s).
58	Class Name	✓	BA—Billing Adjustment	Incremental positive or negative material change to previous EQR totals.
58	Class Name	✓	N/A—Not Applicable	To be used only when the other available class names do not apply.
59	Term Name	✓	LT—Long Term, ST—Short Term, N/A—Not Applicable.	Power sales transactions with durations of one year or greater are long-term. Transactions with shorter durations are short-term.
60	Increment Name	✓		See increment name definitions below.
60	Increment Name	✓	H—Hourly	Terms of the particular sale set for up to 6 consecutive hours (≤6 consecutive hours) Includes LMP based sales in ISO/RTO markets.
60	Increment Name	✓	D—Daily	Terms of the particular sale set for more than 6 and up to 36 consecutive hours (>6 and ≤36 consecutive hours) Includes sales over a peak or off-peak block during a single day.
60	Increment Name	✓	W—Weekly	Terms of the particular sale set for over 36 consecutive hours and up to 168 consecutive hours (>36 and ≤168 consecutive hours). Includes sales for a full week and sales for peak and off-peak blocks over a particular week.
60	Increment Name	✓	M—Monthly	Terms of the particular sale set for more than 168 consecutive hours up to one month (>168 consecutive hours and ≤1 month). Includes sales for full month or multi-week sales during a given month.
60	Increment Name	✓	S—Seasonal	Terms of the specific sales set for greater than one month and less than 365 consecutive days (>1 month and <1 year).
60	Increment Name	✓	Y—Yearly	Terms of the particular sale set for one year or more (≥ 1 year). Includes all long-term contracts with defined pricing terms (fixed-price, formula, or index).
60	Increment Name	✓	N/A—Not Applicable	To be used only when other available increment names do not apply.
61	Increment Peaking Name	✓	See definitions for increment peaking below.	
61	Increment Peaking Name	✓	FP—Full Period	The product described may be sold during all hours under the contract.
61	Increment Peaking Name	✓	OP—Off-Peak	The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery.
61	Increment Peaking Name	✓	P—Peak	The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery.
61	Increment Peaking Name	✓	N/A—Not Applicable	To be used only when the other available increment peaking names do not apply.

EQR DATA DICTIONARY—Continued

[Transaction Data]

Field No.	Field	Required	Value	Definition
62	Product Name	✓	See Product Names Table, Appendix A.	Description of product being offered.
63	Transaction Quantity	✓	Number with up to 4 decimals.	The quantity of the product in this transaction.
64	Price	✓	Number with up to 6 decimals.	Price charged for the product per unit.
65	Rate Units	✓	See Rate Units Table, Appendix F.	Measure appropriate to the price of the product sold.
66	Total Transmission Charge	✓	Number with up to 2 decimals.	Payments received for transmission services when explicitly identified.
67	Total Transaction Charge	✓	Number with up to 2 decimals.	Transaction Quantity (Field 63) times Price (Field 64) plus Total Transmission Charge (Field 66).

EQR DATA DICTIONARY

[Appendix A. Product Names]

Product name	Contract product	Transaction product	Definition
BLACK START SERVICE	✓	✓	Service available after a system-wide blackout where a generator participates in system restoration activities without the availability of an outside electric supply (Ancillary Service).
BOOKED OUT POWER		✓	Energy or capacity contractually committed bilaterally for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).
CAPACITY	✓	✓	A quantity of demand that is charged on a $/KW or $/MW basis.
CAPACITY REASSIGNMENT	✓		An agreement under which a transmission customer sells, assigns or transfers all or portion of its rights to an eligible customer.
CUSTOMER CHARGE	✓	✓	Fixed contractual charges assessed on a per customer basis that could include billing service.
DIRECT ASSIGNMENT FACILITIES CHARGE.	✓		Charges for facilities or portions of facilities that are constructed or used for the sole use/benefit of a particular customer.
EMERGENCY ENERGY	✓		Contractual provisions to supply energy or capacity to another entity during critical situations.
ENERGY	✓	✓	A quantity of electricity that is sold or transmitted over a period of time.
ENERGY IMBALANCE	✓	✓	Service provided when a difference occurs between the scheduled and the actual delivery of energy to a load obligation.
EXCHANGE	✓	✓	(Previously ''Exchange Agreement''). Transaction whereby the receiver accepts delivery of energy for a supplier's account and returns energy later at times, rates, and in amounts as mutually agreed.
FUEL CHARGE	✓	✓	Charge based on the cost or amount of fuel used for generation.
GRANDFATHERED BUNDLED	✓	✓	Services provided for bundled transmission, ancillary services and energy under contracts effective prior to Order No. 888's OATTs.
INTERCONNECTION AGREEMENT	✓		Contract that provides the terms and conditions for a generator, distribution system owner, transmission owner, transmission provider, or transmission system to physically connect to a transmission system or distribution system.
MEMBERSHIP AGREEMENT	✓		Agreement to participate and be subject to rules of a system operator.
MUST RUN AGREEMENT	✓		An agreement that requires a unit to run.
NEGOTIATED-RATE TRANSMISSION.	✓	✓	Transmission performed under a negotiated rate contract (applies only to merchant transmission companies).
NETWORK	✓		Transmission service under contract providing network service.
NETWORK OPERATING AGREEMENT.	✓		An executed agreement that contains the terms and conditions under which a network customer operates its facilities and the technical and operational matters associated with the implementation of network integration transmission service.
OTHER	✓	✓	Product name not otherwise included.
POINT-TO-POINT AGREEMENT	✓		Transmission service under contract between specified Points of Receipt and Delivery.
REACTIVE SUPPLY & VOLTAGE CONTROL.	✓	✓	Production or absorption of reactive power to maintain voltage levels on transmission systems (Ancillary Service).
REAL POWER TRANSMISSION LOSS.	✓	✓≤	The loss of energy, resulting from transporting power over a transmission system.
REGULATION & FREQUENCY RESPONSE.	✓	✓	Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service).

EQR DATA DICTIONARY—Continued

[Appendix A. Product Names]

Product name	Contract product	Transaction product	Definition
REQUIREMENTS SERVICE	✓	✓	Firm, load-following power supply necessary to serve a specified share of customer's aggregate load during the term of the agreement. Requirements service may include some or all of the energy, capacity and ancillary service products. (If the components of the requirements service are priced separately, they should be reported separately in the transactions tab.)
SCHEDULE SYSTEM CONTROL & DISPATCH.	✓	✓	Scheduling, confirming and implementing an interchange schedule with other Balancing Authorities, including intermediary Balancing Authorities providing transmission service, and ensuring operational security during the interchange transaction (Ancillary Service).
SPINNING RESERVE	✓	✓	Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service).
SUPPLEMENTAL RESERVE	✓	✓	Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service).
SYSTEM OPERATING AGREEMENTS.	✓	✓	An executed agreement that contains the terms and conditions under which a system or network customer shall operate its facilities and the technical and operational matters associated with the implementation of network.
TOLLING ENERGY	✓	✓	Energy sold from a plant whereby the buyer provides fuel to a generator (seller) and receives power in return for pre-established fees.
TRANSMISSION OWNERS AGREEMENT.	✓		The agreement that establishes the terms and conditions under which a transmission owner transfers operational control over designated transmission facilities.
UPLIFT	✓	✓	A make-whole payment by an RTO/ISO to a utility.

EQR DATA DICTIONARY

[Appendix B. Balancing Authority]

Balancing authority	Abbreviation
AESC, LLC—Wheatland CIN	AEWC
Alabama Electric Cooperative, Inc.	AEC
Alberta Electric System Operator	AESO
Alliant Energy Corporate Services, LLC—East	ALTE
Alliant Energy Corporate Services, LLC—West	ALTW
Ameren Transmission	AMRN
Ameren Transmission. Illinois	AMIL
Ameren Transmission. Missouri	AMMO
American Transmission Systems, Inc.	FE
Aquila Networks—Kansas	WPEK
Aquila Networks—Missouri Public Service	MPS
Aquila Networks—West Plains Dispatch	WPEC
Arizona Public Service Company	AZPS
Associated Electric Cooperative, Inc.	AECI
Avista Corp.	AVA
Batesville Balancing Authority	BBA
Big Rivers Electric Corp.	BREC
Board of Public Utilities	KACY
Bonneville Power Administration Transmission	BPAT
California Independent System Operator	CISO
Carolina Power & Light Company—CPLW	CPLW
Carolina Power and Light Company—East	CPLE
Central and Southwest	CSWS
Central Illinois Light Co	CILC
Chelan County PUD	CHPD
Cinergy Corporation	CIN
City of Homestead	HST
City of Independence P&L Dept.	INDN
City of Tallahassee	TAL
City Water Light & Power	CWLP
Cleco Power LLC	CLEC
Columbia Water & Light	CWLD
Comision Federal de Electricidad	CFE
Constellation Energy Control and Dispatch—Arkansas	PUPP

EQR DATA DICTIONARY—Continued

[Appendix B. Balancing Authority]

Balancing authority	Abbreviation
Constellation Energy Control and Dispatch—City of Benton, AR	BUBA
Constellation Energy Control and Dispatch—City of Ruston, LA	DERS
Constellation Energy Control and Dispatch—Conway, Arkansas	CNWY
Constellation Energy Control and Dispatch—Gila River	GRMA
Constellation Energy Control and Dispatch—Harquehala	HGMA
Constellation Energy Control and Dispatch—North Little Rock, AK	DENL
Constellation Energy Control and Dispatch—West Memphis, Arkansas	WMUC
Dairyland Power Cooperative	DPC
DECA, LLC—Arlington Valley	DEAA
Duke Energy Corporation	DUK
East Kentucky Power Cooperative, Inc.	EKPC
El Paso Electric	EPE
Electric Energy, Inc.	EEI
Empire District Electric Co., The	EDE
Entergy	EES
ERCOT ISO	ERCO
Florida Municipal Power Pool	FMPP
Florida Power & Light	FPL
Florida Power Corporation	FPC
Gainesville Regional Utilities	GVL
Georgia System Operations Corporation	GSOC
Georgia Transmission Corporation	GTC
Grand River Dam Authority	GRDA
Grant County PUD No. 2	GCPD
Great River Energy	GRE
Great River Energy	GREC
Great River Energy	GREN
Great River Energy	GRES
GridAmerica	GA
Hoosier Energy	HE
Hydro-Quebec, TransEnergie	HQT
Idaho Power Company	IPCO
Illinois Power Co.	IP
Illinois Power Co.	IPRV
Imperial Irrigation District	IID
Indianapolis Power & Light Company	IPL
ISO New England Inc.	ISNE
JEA	JEA
Kansas City Power & Light, Co	KCPL
Lafayette Utilities System	LAFA
LG&E Energy Transmission Services	LGEE
Lincoln Electric System	LES
Los Angeles Department of Water and Power	LDWP
Louisiana Energy & Power Authority	LEPA
Louisiana Generating, LLC	LAGN
Madison Gas and Electric Company	MGE
MHEB, Transmission Services	MHEB
Michigan Electric Coordinated System	MECS
Michigan Electric Coordinated System—CONS	CONS
Michigan Electric Coordinated System—DECO	DECO
MidAmerican Energy Company	MEC
Midwest ISO	MISO
Minnesota Power, Inc.	MP
Montana-Dakota Utilities Co.	MDU
Muscatine Power and Water	MPW
Nebraska Public Power District	NPPD
Nevada Power Company	NEVP
New Brunswick Power Corporation	NBPC
New Horizons Electric Cooperative	NHC1
New York Independent System Operator	NYIS
North American Electric Reliability Council	TEST
Northern Indiana Public Service Company	NIPS
Northern States Power Company	NSP
NorthWestern Energy	NWMT
Ohio Valley Electric Corporation	OVEC
Oklahoma Gas and Electric	OKGE
Ontario—Independent Electricity Market Operator	IMO
OPPD CA/TP	OPPD
Otter Tail Power Company	OTP
P.U.D. No. 1 of Douglas County	DOPD
PacifiCorp—East	PACE

EQR DATA DICTIONARY—Continued

[Appendix B. Balancing Authority]

Balancing authority	Abbreviation
PacifiCorp—West	PACW
PJM Interconnection	PJM
Portland General Electric	PGE
Public Service Company of Colorado	PSCO
Public Service Company of New Mexico	PNM
Puget Sound Energy Transmission	PSEI
Reedy Creek Improvement District	RC
Sacramento Municipal Utility District	SMUD
Salt River Project	SRP
Santee Cooper	SC
SaskPower Grid Control Centre	SPC
Seattle City Light	SCL
Seminole Electric Cooperative	SEC
Sierra Pacific Power Co.—Transmission	SPPC
South Carolina Electric & Gas Company	SCEG
South Mississippi Electric Power Association	SME
South Mississippi Electric Power Association	SMEE
Southeastern Power Administration—Hartwell	SEHA
Southeastern Power Administration—Russell	SERU
Southeastern Power Administration—Thurmond	SETH
Southern Company Services, Inc.	SOCO
Southern Illinois Power Cooperative	SIPC
Southern Indiana Gas & Electric Co.	SIGE
Southern Minnesota Municipal Power Agency	SMP
Southwest Power Pool	SWPP
Southwestern Power Administration	SPA
Southwestern Public Service Company	SPS
Sunflower Electric Power Corporation	SECI
Tacoma Power	TPWR
Tampa Electric Company	TEC
Tennessee Valley Authority ESO	TVA
Trading Hub	HUB
TRANSLink Management Company	TLKN
Tucson Electric Power Company	TEPC
Turlock Irrigation District	TIDC
Upper Peninsula Power Co.	UPPC
Utilities Commission, City of New Smyrna Beach	NSB
Westar Energy—MoPEP Cities	MOWR
Western Area Power Administration—Colorado-Missouri	WACM
Western Area Power Administration—Lower Colorado	WALC
Western Area Power Administration—Upper Great Plains East	WAUE
Western Area Power Administration—Upper Great Plains West	WAUW
Western Farmers Electric Cooperative	WFEC
Western Resources dba Westar Energy	WR
Wisconsin Energy Corporation	WEC
Wisconsin Public Service Corporation	WPS
Yadkin, Inc.	YAD

EQR DATA DICTIONARY

[Appendix C. Hub]

HUB	Definition
ADHUB	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the AEP/Dayton Hub.
AEP (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the AEP balancing authority.
AEPGenHub	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the AEPGenHub.
COB	The set of delivery points along the California-Oregon commonly identified as and agreed to by the counterparties to constitute the COB Hub.
Cinergy (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Cinergy balancing authority.
Cinergy Hub (MISO)	The aggregated Elemental Pricing nodes (''Epnodes'') nodes defined by the Midwest Independent Transmission System Operator, Inc., as Cinergy Hub (MISO).
Comed (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Commonwealth Edison balancing authority.
Entergy (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Entergy balancing authority.

EQR DATA DICTIONARY—Continued

[Appendix C. Hub]

HUB	Definition
FE Hub	The aggregated Elemental Pricing nodes (''Epnodes'') nodes defined by the Midwest Independent Transmission System Operator, Inc., as FE Hub (MISO).
Four Corners	The set of delivery points at the Four Corners power plant commonly identified as and agreed to by the counterparties to constitute the Four Corners Hub.
Illinois Hub (MISO)	The aggregated Elemental Pricing nodes (''Epnodes'') nodes defined by the Midwest Independent Transmission System Operator, Inc., as Illinois Hub (MISO).
Mead	The set of delivery points at or near Hoover Dam commonly identified as and agreed to by the counterparties to constitute the Mead Hub.
Michigan Hub (MISO)	The aggregated Elemental Pricing nodes (''Epnodes'') nodes defined by the Midwest Independent Transmission System Operator, Inc., as Michigan Hub (MISO).
Mid-Columbia (Mid-C)	The set of delivery points along the Columbia River commonly identified as and agreed to by the counterparties to constitute the Mid-Columbia Hub.
Minnesota Hub (MISO)	The aggregated Elemental Pricing nodes (''Epnodes'') nodes defined by the Midwest Independent Transmission System Operator, Inc., as Minnesota Hub (MISO).
NEPOOL (Mass Hub)	The aggregated Locational Marginal Price (''LMP'') nodes defined by ISO New England Inc., as Mass Hub.
NIHUB	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the Northern Illinois Hub.
NOB	The set of delivery points along the Nevada-Oregon border commonly identified as and agreed to by the counterparties to constitute the NOB Hub.
NP15	The set of delivery points north of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the NP15 Hub.
NWMT	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Northwestern Energy Montana balancing authority.
PJM East Hub	The aggregated Locational Marginal Price nodes (''LMP'') defined by PJM Interconnection, LLC as the PJM East Hub.
PJM South Hub	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the PJM South Hub.
PJM West Hub	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the PJM Western Hub.
Palo Verde	The switch yard at the Palo Verde nuclear power station west of Phoenix in Arizona.
SOCO (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Southern Company balancing authority.
SP15	The set of delivery points south of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the SP15 Hub.
TVA (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Tennessee Valley Authority balancing authority.
ZP26	The set of delivery points associated with Path 26 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the ZP26 Hub.

EQR DATA DICTIONARY

[Appendix D. Time Zone]

Time zone	Definition
AD	Atlantic Daylight.
AP	Atlantic Prevailing.
AS	Atlantic Standard.
CD	Central Daylight.
CP	Central Prevailing.
CS	Central Standard.
ED	Eastern Daylight.
EP	Eastern Prevailing.
ES	Eastern Standard.
MD	Mountain Daylight.
MP	Mountain Prevailing.
MS	Mountain Standard.
NA	Not Applicable.
PD	Pacific Daylight.
PP	Pacific Prevailing.
PS	Pacific Standard.
UT	Universal Time.

EQR DATA DICTIONARY

[Appendix E. Units]

Units	Definition
KV	Kilovolt.

EQR DATA DICTIONARY—Continued

[Appendix E. Units]

Units	Definition
KVA	Kilovolt Amperes.
KVR	Kilovar.
KW	Kilowatt.
KWH	Kilowatt Hour.
KW–DAY	Kilowatt Day.
KW–MO	Kilowatt Month.
KW–WK	Kilowatt Week.
KW–YR	Kilowatt Year.
MVAR–YR	Megavar Year.
MW	Megawatt.
MWH	Megawatt Hour.
MW–DAY	Megawatt Day.
MW–MO	Megawatt Month.
MW–WK	Megawatt Week.
MW–YR	Megawatt Year.
RKVA	Reactive Kilovolt Amperes.
FLAT RATE	Flat Rate.

EQR DATA DICTIONARY

[Appendix F. Rate Units]

Rate units	Definition
$/KV	Dollars per kilovolt.

EQR DATA DICTIONARY—Continued

[Appendix F. Rate Units]

Rate units	Definition
$/KVA	Dollars per kilovolt amperes.
$/KVR	Dollars per kilovar.
$/KW	Dollars per kilowatt.
$/KWH	Dollars per kilowatt hour.
$/KW–DAY	Dollars per kilowatt day.
$/KW–MO	Dollars per kilowatt month.
$/KW–WK	Dollars per kilowatt week.
$/KW–YR	Dollars per kilowatt year.
$/MW	Dollars per megawatt.
$/MWH	Dollars per megawatt hour.
$/MW–DAY	Dollars per megawatt day.
$/MW–MO	Dollars per megawatt month.
$/MW–WK	Dollars per megawatt week.
$/MW–YR	Dollars per megawatt year.
$/MVAR–YR	Dollars per megavar year.
$/RKVA	Dollars per reactive kilovar amperes.
CENTS	Cents.
CENTS/KVR	Cents per kilovolt amperes.
CENTS/KWH	Cents per kilowatt hour.
FLAT RATE	Rate not specified in any other units.

Attachment B

Explanation and Comparison of Revisions to Prior Commission Orders Contained in the Proposed EQR Data Dictionary Definitions

ID DATA

Respondent Data

Field Number 1: Filer Unique Identifier

Current Definition: None

Proposed Definition: FR (Filing Respondent)—An identifier (*i.e.*, ''FR1'') used to designate a record containing Respondent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FR1 identifier may be imported into an EQR for a given quarter.

Field Number 2: Company Name

Current Definition: Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report).

Proposed Definition: The name of the company taking responsibility for complying with the Commission's regulations related to the EQR.

Field Number 3: Company Duns Number

Current Definition: DUNS number for company unique identification.

Proposed Definition: The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 2.

Field Number 4: Contact Name

Current Definition: Name of contact(s) for the filing.

Proposed Definition: Name of the person at the Respondent's company taking responsibility for compliance with the Commission's EQR regulations.

Field Number 5: Contact Title

Current Definition: Title of contact.

Proposed Definition: Title of contact identified in Field Number 4.

Field Number 6: Contact Address

Current Definition: Street address for contact.

Proposed Definition: Street address for contact identified in Field Number 4.

Field Number 7: Contact City

Current Definition: Contact city.

Proposed Definition: Contact city for the contact identified in Field Number 4.

Field Number 8: Contact State

Current Definition: Two character state or province abbreviation.

Proposed Definition: Two character state or province abbreviations for the contact identified in Field Number 4.

Field Number 9: Contact Zip

Current Definition: Contact zip code.

Proposed Definition: Zip code for the contact identified in Field Number 4.

Field Number 10: Contact Country Name

Current Definition: Country (USA, Canada, Mexico, or United Kingdom) for contact address for the company identified in Field Number 2.

Proposed Definition: Contact address for the contact identified in Field Number 4.

Field Number 11: Contact Phone

Current Definition: Phone number of contact.

Proposed Definition: Phone number of contact identified in Field Number 4.

Field Number 12: Contact Email

Current Definition: E-mail address of contact.

Proposed Definition: E-mail address of contact identified in Field Number 4.

Field Number 13: Filing Quarter

Current Definition: The period for which the Electric Quarterly Report is being submitted.

Proposed Definition: A six digit reference number used by the EQR software to indicate the quarter and year of the filing for the purpose of importing data from csv files. The first 4 numbers represent the year (*e.g.* 2007). The last 2 numbers represent the last month of the quarter (*e.g.* 03=1st quarter; 06=2nd quarter, 09=3rd quarter, 12= 4th quarter)

Seller Data

Field Number 1: Filer Unique Identifier

Current Definition: None

Proposed Definition: FS (Filing Seller)—An identifier (*e.g.*, ''FS1'', ''FS2'') used to designate a record containing Seller identification information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each seller company may be imported into an EQR for a given quarter.

Field Number 2: Company Name

Current Definition: Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report).

Proposed Definition: The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Company Name of the Respondent.

Field Number 3: Company Duns Number

Current Definition: DUNS number for company unique identification.

Proposed Definition: The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field 2.

Field Number 4: Contact Name

Current Definition: Name of contact(s) for the filing.

Proposed Definition: The name of the contact for the company authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Company Name of the Respondent.

Field Number 5: Contact Title

Current Definition: Title of contact.

Proposed Definition: Title of contact identified in Field Number 4.

Field Number 6: Contact Address

Current Definition: Street address for contact.

Proposed Definition: Street address for contact identified in Field Number 4.

Field Number 7: Contact City

Current Definition: Contact city.

Proposed Definition: Contact city for the contact identified in Field Number 4.

Field Number 8: Contact State

Current Definition: Two character state or province abbreviation.

Proposed Definition: Two character state or province abbreviations for the contact identified in Field Number 4.

Field Number 9: Contact Zip

Current Definition: Contact zip code.

Proposed Definition: Zip code for the contact identified in Field Number 4.

Field Number 10: Contact Country Name

Current Definition: Country (USA, Canada, Mexico or United Kingdom) for contact address.

Proposed Definition: Country (USA, Canada, Mexico, or United Kingdom) for contact address identified in Field Number 4.

Field Number 11: Contact Phone

Current Definition: Phone number of contact.

Proposed Definition: Phone number of contact identified in Field Number 4.

Field Number 12: Contact Email

Current Definition: E-mail address of contact.

Proposed Definition: E-mail address of contact identified in Field Number 4.

Field Number 13: Filing Quarter

Current Definition: The period for which the Electric Quarterly Report is being submitted.

Proposed Definition: A six digit reference number used by the EQR software to indicate the quarter and year of the filing for the purpose of importing data from csv files. The first 4 numbers represent the year (e.g. 2007). The last 2 numbers represent the last month of the quarter (e.g. 03 = 1st quarter; 06 = 2nd quarter, 09 = 3rd quarter, 12 = 4th quarter)

Agent Data

Field Number 1: Filer Unique Identifier

Current Definition: None

Proposed Definition: FA (Filing Agent)—An identifier (i.e., ''FA1'') used to designate a record containing Agent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FA1 identifier may be imported into an EQR for a given quarter.

Field Number 2: Company Name

Current Definition: Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report).

Proposed Definition: The name of the entity completing the EQR filing. The Agent's Company Name need not be the name of a company under Commission jurisdiction.

Field Number 3: Company Duns Number

Current Definition: DUNS number for company unique identification.

Proposed Definition: The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field 2.

Field Number 4: Contact Name

Current Definition: Name of contact(s) for the filing.

Proposed Definition: Name of the contact for the Agent, usually the person who prepares the filing.

Field Number 5: Contact Title

Current Definition: Title of contact.

Proposed Definition: Title of contact identified in Field Number 4.

Field Number 6: Contact Address

Current Definition: Street address for contact.

Proposed Definition: Street address for contact identified in Field Number 4.

Field Number 7: Contact City

Current Definition: Contact city.

Proposed Definition: City for the contact identified in Field Number 4.

Field Number 8: Contact State

Current Definition: Two character state or province abbreviation.

Proposed Definition: Two character state or province abbreviations for the contact identified in Field Number 4.

Field Number 9: Contact Zip

Current Definition: Contact zip code.

Proposed Definition: Zip code for the contact identified in Field Number 4.

Field Number 10: Contact Country Name

Current Definition: Country (USA, Canada, Mexico or United Kingdom) for contact address.

Proposed Definition: Country (USA, Canada, Mexico, or United Kingdom) for contact address identified in Field Number 4.

Field Number 11: Contact Phone

Current Definition: Phone number of contact.

Proposed Definition: Phone number of contact identified in Field Number 4.

Field Number 12: Contact Email

Current Definition: E-mail address of contact.

Proposed Definition: E-mail address of contact identified in Field Number 4.

Field Number 13: Filing Quarter

Current Definition: The period for which the Electric Quarterly Report is being submitted.

Proposed Definition: A six digit reference number used by the EQR software to indicate the quarter and year of the filing for the purpose of importing data from csv files. The first 4 numbers represent the year (e.g. 2007). The last 2 numbers represent the last month of the quarter (e.g. 03 = 1st quarter; 06 = 2nd quarter, 09 = 3rd quarter, 12 = 4th quarter)

CONTRACT DATA:

Field Number 14: Contract Unique ID

Current Definition: None.

Proposed Definition: An identifier beginning with the letter ''C'' and followed by a number (e.g., ''C1'', ''C2'') used to designate a record containing contract information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each contract product may be imported into an EQR for a given quarter.

Field Number 15: Seller Company Name

Current Definition: Name of company (For consistency sake, it must be represented the same as it is listed in the DUNS Report.)

Proposed Definition: The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's ''Company Name'' in Field Number 2 of the ID Data (Seller Data).

Field Number 16: Customer Company Name

Current Definition: Name of company (For consistency sake, it must be represented the same as it is listed in the DUNS Report.)

Proposed Definition: The name of the counterparty to the contract.

Field Number 17: Customer DUNS Number

Current Definition: DUNS Number for Company Unique Identification.

Proposed Definition: The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 16.

Field Number 18: Contract Affiliate

Current Definition: This is a flag to determine if the customer is an affiliate. Set to Yes if the customer is an affiliate of the provider.

Proposed Definition: The customer is an affiliate if it controls, is controlled by or is under common control with the seller, and includes a division that operates as a functional unit. This includes a division that operates as a functional unit. A customer of a seller who is an Exempt Wholesale Generator may be defined as an affiliate under the Public Utility Holding Company Act and the FPA.

Field Number 19: FERC Tariff Reference

Current Definition: Valid Entries: FERC's designation, e.g., ''FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;'' or ''FERC Electric Rate Schedule No. 126.''

Proposed Definition: The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales or power sales at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.

Field Number 20: Contract Service Agreement ID

Current Definition: Unique (company) name given to each service agreement. It may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it can be an internal numbering system.

Proposed Definition: Unique identifier given to each service

agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed with and accepted by the Commission, or it may be generated as part of an internal identification system.

Field Number 21: Contract Execution Date

Current Definition: The date the contract was signed. If the parties signed on different dates, or there are different contract amendments, the latest date signed.

Proposed Definition: The date the contract was signed. If the parties signed on different dates, or there are contract amendments, use the most recent date signed.

Field Number 22: Contract Commencement Date

Current Definition: The first date the contract was effective—frequently the first date of service under a contract.

Proposed Definition: The date the contract was effective. If it is not specified in the contract, the first date of service under the contract.

Field Number 23: Contract Termination Date

Current Definition: The date specified (if any) in the contract that the contract will expire of its own terms.

Proposed Definition: The date that the contract expires.

Field Number 24: Actual Termination Date

Current Definition: The date the contract actually terminates.

Proposed Definition: No Change.

Field Number 25: Extension Provision Description

Current Definition: Description of extension provision. This field would contain Text—for example ''Automatically renewed until canceled.''

Proposed Definition: Description of terms that provide for the continuation of the contract.

Field Number 26: Class Name

Current Definition: Name of class. Valid entries are F—Firm, NF—Non-Firm, UP—Unit Power Sale, BA—Billing Adjustment, and N/A—Not Applicable.

Proposed Definition:

- F—Firm: For transmission sales, service or product that always has priority over non-firm service. For power sales, service or product that is not interruptible for economic reasons.
- NF—Non-Firm: For transmission sales, service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to firm service. An energy sale for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
- UP—Unit Power Sale: Designates a dedicated sale of energy and capacity from one or more than one generation unit(s).
- N/A—Not Applicable: To be used only when the other available Class Names do not apply.

Field Number 27: Term Name

Current Definition: Name for term. LT = Long-Term (≥ one year), ST = Short-Term (< one year).

Proposed Definition: Contracts with durations of one year or greater are long-term. Contracts with shorter durations are short-term.

Field Number 28: Increment Name

Current Definition: None.

Proposed Definition:

- H—Hourly: Terms of the contract (if specifically noted in the contract) set for up to 6 consecutive hours (≤ 6 consecutive hours).
- D—Daily: Terms of the contract (if specifically noted in the contract) set for more than 6 and up to 36 consecutive hours (> 6 and ≤ 36 consecutive hours).
- W–Weekly: Terms of the contract (if specifically noted in the contract) set for over 36 consecutive hours and up to 168 consecutive hours (> 36 and ≤ 168 consecutive hours).
- M—Monthly: Terms of the contract (if specifically noted in the contract) set for more than 168 consecutive hours up to one month (> 168 consecutive hours and ≤ 1 month).
- S—Seasonal: Terms of the contract (if specifically noted in the contract) set for greater than one month and less than 365 consecutive days (> 1 month and < 1 year).
- Y—Yearly: Terms of the contract (if specifically noted in the contract) set for one year or more (≤ 1 year).
- N/A—Not Applicable: Terms of the contract do not specify an increment.

Field Number 29: Increment Peaking Name

Current Definition: Name for increment peaking. For product, services, or transaction[s] that are identified as P = On Peak, OP = Off-Peak, FP = Full Period, N/A = Not Applicable, Undefined.

Proposed Definition:

- FP—Full Period: The product described may be sold during all hours under the contract.
- OP—Off-Peak: The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery.
- P—Peak: The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery.
- N/A—Not Applicable: To be used only when the increment peaking name is not specified in the contract.

Field Number 30: Product Type Name

Current Definition: A product is something being bought and sold, a type of service or standard agreement. The ''product type name'' includes: T = Electric Transmission, MB = Market Based Power, CB = Cost Based Power, S = Services—Other.

Proposed Definition:

- CB—Cost-Based: Energy or capacity sold under a FERC-approved cost-based rate tariff.
- MB—Market-Based: Energy sold under the seller's FERC-approved market-based rate tariff.
- T—Transmission: The product is sold under a FERC-approved transmission tariff.
- Other: The product cannot be characterized by the other product type names.

Field Number 31: Product Name

Current Definition: A product is something being bought and sold, a type of service or standard agreement.

Proposed Definition: Description of the product being offered. (Refer to Attachment A-Appendix A for an acceptable list of product names for this field).

Field Number 32: Quantity

Current Definition: Product quantity for the contract item identified.

Proposed Definition: Quantity for the contract product identified.

Field Number 33: Units

Current Definition: The unit of measurement for the quantity and rates represented. Examples include KW, MW, and MWH.

Proposed Definition: Measure stated in the contract for the product sold (Refer to Attachment A-Appendix E for an acceptable list of units for this field).

Field Number 34: Rate

Current Definition: Rate charged for this product per unit. Used when a single rate is designated for a product.

Proposed Definition: The charge for the product per unit as stated in the contract.

Field Number 35: Rate Minimum

Current Definition: Minimum rate to be charged per the contract, if a range is specified.

Proposed Definition: No Change.

Field Number 36: Rate Maximum

Current Definition: Maximum rate to be charged per the contract, if a range is specified.

Proposed Definition: No Change.

Field Number 37: Rate Description

Current Definition: Text description of rate. May reference FERC tariff, or, if a discounted or negotiated rate, include algorithm.

Proposed Definition: No Change.

Field Number 38: Rate Units

Current Definition: The unit of measurement for the quantity and rates represented. Examples include KW, MW, and MWH.

Proposed Definition: Measure stated in the contract for the product sold. (Refer to Attachment A-Appendix F for an acceptable list of rate units for this field).

Field Number 39: Point of Receipt Balancing Authority (PORBA)

Current Definition: The registered control area abbreviation used in OASIS applications.

Proposed Definition: The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications or ''Hub'' if point of receipt is at a restricted trading hub.

Field Number 40: Point of Receipt Specific Location (PORSL)

Current Definition: The specific location for the point of receipt (POR) as spelled out in the contract. Examples include a named sub-station or generation plant.

Proposed Definition: The specific location at which the product is received if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used. (Refer to Attachment A-Appendix C for an acceptable list of locations for this field).

Field Number 41: Point of Delivery Balancing Authority (PODBA)

Current Definition: The registered control area abbreviation used in OASIS applications.

Proposed Definition: The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications or ''Hub'' if point of receipt is at a restricted trading hub.

Field Number 42: Point of Delivery Specific Location (PODSL)

Current Definition: The specific location for the point of delivery (POD) as spelled out in the contract. Examples include a named sub-station or generation plant.

Proposed Definition: The specific location at which the product is delivered if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used. (Refer to Attachment A-Appendix C for an acceptable list of hubs for this field).

Field Number 43: Begin Date

Current Definition: Beginning date [of] for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ = time zone.

Proposed Definition: First date for the sale of the product at the rate specified.

Field Number 44: End Date

Current Definition: Ending date for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ = time zone.

Proposed Definition: Last date for the sale of the product at the rate specified.

Field Number 45: Time Zone.

Current Definition: None.

Proposed Definition: The time zone in which the sales will be made under the contract. (Refer to Attachment A-Appendix D for an acceptable list of time zones for this field).

TRANSACTION DATA

Field Number 46: Transaction Unique ID

Current Definition: None.

Proposed Definition: An identifier beginning with the letter ''T'' and followed by a number (e.g., ''T1'', ''T2'') used to designate a record containing transaction information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each transaction record may be imported into an EQR for a given quarter. A new transaction record must be used every time a price changes in a sale.

Field Number 47: Seller Company Name

Current Definition: Name of company (For consistency sake, it must be represented the same as it is listed in the DUNS Report.)

Proposed Definition: The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's ''Company Name'' in Field 2 of the ID Data (Seller Data).

Field Number 48: Customer Company Name

Current Definition: Name of company. (For consistency sake, it must be represented the same as it is listed in the DUNS Report.)

Proposed Definition: The name of the counterparty to the contract.

Field Number 49: Customer DUNS Number

Current Definition: DUNS Number for Company Unique Identification.

Proposed Definition: The unique nine digit number assigned by Dun and Bradstreet to the counterparty to the contract.

Field Number 50: FERC Tariff Reference

Current Definition: Valid Entries: FERC's designation, e.g., ''FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;'' or ''FERC Electric Rate Schedule No. 126.''

Proposed Definition: The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales or power sales at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.

Field Number 51: Contract Service Agreement ID

Current Definition: Unique (company) name given to each service agreement. It may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it can be an internal numbering system.

Proposed Definition: Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it may be generated as part of an internal identification system.

Field Number 52: Transaction Unique Identifier

Current Definition: Unique reference number assigned by the seller for each transaction.

Proposed Definition: No Change.

Field Number 53: Transaction Begin Date

Current Definition: Transaction begin date must be prior to the end of the reporting quarter. Date must contain hours, minutes, seconds, and time zone (MM.DD.YYYY.HH.MM.SS.TZ). Where minutes and seconds are not provided, default to zeros.

Proposed Definition: First date and time the product is sold during the quarter at the specified price.

Field Number 54: Transaction End Date

Current Definition: Transaction end date and time must be after the beginning of the reporting quarter. Date must contain hours, minutes, seconds, and time zone (MM.DD.YYYY.HH.MM.SS.TZ). Where minutes and seconds are not provided, default to zeros.

Proposed Definition: Last date and time the product is sold during the quarter at the specified price.

Field Number 55: Time Zone.

Current Definition: None.

Proposed Definition: The time zone in which the sales will be made under the contract. (Refer to Attachment A-Appendix D for an acceptable list of time zones for this field).

Field Number 56: Point of Delivery Balancing Authority (PODBA)

Current Definition: The registered control area abbreviation used in OASIS applications.

Proposed Definition: The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications or ''Hub'' if point of receipt is at a restricted trading hub.

Field Number 57: Point of Delivery Specific Location (PODSL)

Current Definition: The specific location for the point of delivery (POD) as spelled out in the contract. Examples include sub-station or generation plant.

Proposed Definition: The specific location at which the product is delivered. If receipt occurs at a trading hub, a standardized hub name must be used. (Refer to Attachment A-Appendix C for an acceptable list of hubs for this field).

Field Number 58: Class Name

Current Definition: Name of class. Valid entries are F-Firm, NF-Non-Firm, UP-Unit Power Sale, BA-Billing Adjustment, and N/A-Not Applicable.

Proposed Definition:

- F-Firm: For transmission sales, service or product that always has priority over non-firm service. For power sales, service or product that is not interruptible for economic reasons.
- NF-Non-Firm: For transmission sales, service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to firm transmission service. An energy sale for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
- UP-Unit Power Sale: Designates a dedicated sale of energy and capacity from one or more than one generation unit(s).
- BA-Billing Adjustment: Incremental positive or negative material change to previous EQR totals.
- N/A-Not Applicable: To be used only when the other available class names do not apply.

Field Number 59: Term Name

Current Definition: Name for term. LT = Long-Term (> one year), ST = Short-Term (≤ one year).

Proposed Definition: Power sales transactions with durations one year or greater are long-term. Transactions with shorter durations are short-term.

Field Number 60: Increment Name

Current Definition: Name of increment which would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or annually) or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)

Proposed Definition:

- H-Hourly: Terms of the particular sale set for up to 6 consecutive hours (≤ 6 consecutive hours) Includes LMP based sales in ISO/RTO markets.
- D-Daily: Terms of the particular sale set for more than 6 and up to 36 consecutive hours (> 6 and ≤ 36 consecutive hours) Includes sales over a peak or off-peak block during a single day.
- W-Weekly: Terms of the particular sale set for over 36 consecutive hours and up to 168 consecutive hours (> 36 and ≤ 168 consecutive hours). Includes sales for a full week and sales for peak and off-peak blocks over a particular week.
- M-Monthly: Terms of the particular sale set for set for more than 168 consecutive hours up to one month (> 168 consecutive hours and ≤ 1 month). Includes sales for full month or multi-week sales during a given month.
- S-Seasonal: Terms of the specific sales set for greater than one month and less than 365 consecutive days (> 1 month and < 1 year).
- Y-Yearly: Terms of the particular sale set for one year or more (≥ 1 year). Includes all long-term contracts with defined pricing terms (fixed-price, formula, or indexed).
- N/A-Not Applicable: To be used only when other available increment names do not apply.

Field Number 61: Increment Peaking Name

Current Definition: Name for increment peaking. For product, services, or transaction[s] that are identified as P = On Peak, OP = Off-Peak, FP = Full Period, N/A = Not Applicable, Undefined.

Proposed Definition:

- FP—Full Period: The product described may be sold during all hours under the contract.
- OP—Off-Peak: The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery.
- P—Peak: The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery.
- N/A—Not Applicable: To be used only when other available increment peaking names do not apply.

Field Number 62: Product Name

Current Definition: A product is something being bought and sold, a type of service or standard agreement.

Proposed Definition: Description of product being offered. (Refer to Attachment A-Appendix A for an acceptable list of product names for this field).

Field Number 63: Transaction Quantity

Current Definition: The quantity of the product in this transaction. This could be a whole number or it could include decimals.

Proposed Definition: The quantity of the product in this transaction.

Field Number 64: Price

Current Definition: Rate charged for this item per unit. Used with contract data when a single rate is designated for a product. Used with transaction data to designate the transaction period's weighted average actual rate.

Proposed Definition: Price charged for the product per unit.

Field Number 65: Rate Units

Current Definition: The unit of measurement for the quantity and rates represented. Examples include KW, MW, and MWH.

Proposed Definition: Measure appropriate to the price of the product

sold. (Refer to Attachment A-Appendix F for an acceptable list of rate units for this field).

Field Number 66: Total Transmission Charge

Current Definition: State N/A if transmission is not provided by the selling entity, else this represents the total transmission charge associated with the identified power sale transaction.

Proposed Definition: Payments received for transmission services when explicitly identified.

Field Number 67: Total Transaction Charge

Current Definition: Total revenue for transaction, including for the commodity and all other services related to the commodity sale under the terms of the contract, including bundled ancillary and transmission services provided by the respondent or others. This is in dollars and cents.

Proposed Definition: Transaction Quantity (Field 63) times Price (Field 64) plus Total Transmission Charge (Field 66).

PRODUCT NAME APPENDIX

BLACK START SERVICE

Current Definition: Service available after a system-wide blackout where a generator participates in system restoration activities without the availability of an outside electric supply (Ancillary Service)

Proposed Definition: No Change.

BOOKED OUT POWER

Energy or capacity contractually committed bilaterally for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).

Proposed Definition: No Change.

CAPACITY

A quantity of demand that is charged on a $/KW or $/MW basis.

Proposed Definition: No Change.

CAPACITY REASSIGNMENT

Current Definition: None.

Proposed Definition: An agreement under which a transmission customer sells, assigns or transfers all or portion of its rights to an eligible customer.

CUSTOMER CHARGE

Current Definition: Fixed contractual charges assessed on a per customer basis that could include billing service.

Proposed Definition: No Change.

DIRECT ASSIGNMENT FACILITIES CHARGE

Charges for facilities or portions of facilities that are constructed or used for the sole use/benefit of a particular customer.

Proposed Definition: No Change.

EMERGENCY ENERGY

Contractual provisions to supply energy or capacity to another entity during critical situations.

Proposed Definition: No Change.

ENERGY

A quantity of electricity that is sold or transmitted over a period of time.

Proposed Definition: No Change.

ENERGY IMBALANCE

Service provided when a difference occurs between the scheduled and the actual delivery of energy to a load obligation.

Proposed Definition: No Change.

EXCHANGE

(Previously ''Exchange Agreement''.) Transaction whereby the receiver accepts delivery of energy for a supplier's account and returns energy later at times, rates, and in amounts as mutually agreed.

Proposed Definition: The product name is being changed from ''Exchange Agreement'' to ''Exchange.'' However, the underlying definition is not proposed to be changed.

FUEL CHARGE

Current Definition: Charge based on the cost or amount of fuel used for generation.

Proposed Definition: No Change.

GRANDFATHERED BUNDLED

Services provided for bundled transmission, ancillary services and energy under contracts effective prior to Order No. 888's OATTs.

Proposed Definition: No Change.

INTERCONNECTION AGREEMENT

Contract that provides the terms and conditions for a generator, distribution system owner, transmission owner, transmission provider, or transmission system to physically connect to a transmission system or distribution system.

Proposed Definition: No Change.

MEMBERSHIP AGREEMENT

Agreement to participate and be subject to rules of a system operator.

Proposed Definition: No Change.

MUST RUN AGREEMENT

An agreement that requires a unit to run.

Proposed Definition: No Change.

NEGOTIATED-RATE TRANSMISSION

Transmission performed under a negotiated rate contract (applies only to merchant transmission companies).

Proposed Definition: No Change.

NETWORK

Transmission service under contract providing network service.

Proposed Definition: No Change.

NETWORK OPERATING AGREEMENT

An executed agreement that contains the terms and conditions under which a network customer operates its facilities and the technical and operational matters associated with the implementation of network integration transmission service.

Proposed Definition: No Change.

OTHER

Product name not otherwise included.

Proposed Definition: No Change.

POINT-TO-POINT AGREEMENT

Transmission service under contract between specified Points of Receipt and Delivery.

Proposed Definition: No Change.

REACTIVE SUPPLY & VOLTAGE CONTROL

Production or absorption of reactive power to maintain voltage levels on transmission systems (Ancillary Service).

Proposed Definition: No Change.

REAL POWER TRANSMISSION LOSS

The loss of energy, resulting from transporting power over a transmission system.

Proposed Definition: No Change.

REGULATION & FREQUENCY RESPONSE

Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered as necessary to follow the moment-by-moment changes in load (Ancillary Service).

Proposed Definition: Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service).

REQUIREMENTS SERVICE

Current Definition: Firm, load-following power supply necessary to serve a specified share of customer's aggregate load during the term of the agreement. Requirements service may include some or all of the energy, capacity and ancillary service products. (If the components of the requirements service are priced separately, they should be reported separately in the transactions tab.)

Proposed Definition: No Change.

SCHEDULE SYSTEM CONTROL & DISPATCH

Scheduling, confirming and implementing an interchange schedule with other Balancing Authorities, including intermediary Balancing Authorities providing transmission service, and ensuring operational security during the interchange transaction (Ancillary Service).

Proposed Definition: No Change.

SPINNING RESERVE

Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period (Ancillary Service).

Proposed Definition: Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service).

SUPPLEMENTAL RESERVE

Current Definition: Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE (Ancillary Service).

Proposed Definition: Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service).

SYSTEM OPERATING AGREEMENTS

Current Definition: An executed agreement that contains the terms and conditions under which a system or network customer shall operate its facilities and the technical and operational matters associated with the implementation of network.

Proposed Definition: No Change.

TOLLING ENERGY

Current Definition: None.

Proposed Definition: Energy sold from a plant whereby the buyer provides fuel to a generator (seller) and receives power in return for pre-established fees.

TRANSMISSION OWNERS AGREEMENT

Current Definition: The agreement that establishes the terms and conditions under which a transmission owner transfers to an ISO operational control over designated transmission facilities.

Proposed Definition: The agreement that establishes the terms and conditions under which a transmission owner transfers operational control over designated transmission facilities.

UPLIFT

Current Definition: None.

Proposed Definition: A make-whole payment by an RTO/ISO to the EQR filer.

Balancing Authority Appendix:

Ameren Native Load—No Change
Alabama Electric Cooperative, Inc.—No Change
Associated Electric Cooperative, Inc.—No Change
Alberta Electric System Operator—No Change
AESC, LLC—Wheatland CIN-Revised NERC Definition—AEWC, Allegheny Energy Supply Company, LLC—Wheatland CIN, ECAR
Alliant Energy—CA—ALTE-Revised NERC Definition—ALTE, Alliant Energy Corporate Services, Inc.—East, MRO
Alliant Energy—CA—ALTW—Revised NERC Definition—ALTW, Alliant Energy Corporate Services, Inc.—West, MRO
Ameren Transmission—Revised NERC Definition—AMRN, Ameren Transmission (legal name Ameren Services Company), SERC
Avista Corp.—Revised NERC Definition—AVA, Avista Corp., WSCC
Arizona Public Service Company—Revised NERC Definition—AZPS, Arizona Public Service Company, WSCC
CECD, LLC—Batesville—No Change
British Columbia Transmission Corporation—No Change
Bonneville Power Administration Transmission—Revised NERC Definition—BPAT, Bonneville Power Administration Transmission, WSCC
Big Rivers Electric Corp.—Revised NERC Definition—BREC, Big Rivers Electric Corp., SERC
Comision Federal de Electricidad—Revised NERC Definition—CFE, Comision Federal de Electricidad, WSCC
Chelan County PUD—Revised NERC Definition—CHPD, Chelan County PUD, WSCC
Central Illinois Light Co—Revised NERC Definition—CILC, Central Illinois Light Co, SERC
Cinergy Corporation—No Change
California Independent System Operator—Revised NERC Definition—CISO, California Independent System Operator (CAISO), WSCC
Cleco Power LLC—No Change
CECD, LLC—No Change
Michigan Electric Coordinated System—Consumers—No Change
Carolina Power & Light Company—CPLE—Revised NERC Definition—CPLE, Carolina Power & Light Company—East, SERC
Carolina Power & Light Company—CPLW—Revised NERC Definition—CPLW, Carolina Power & Light Company—West, SERC
Central and Southwest—No Change
Columbia Water & Light—Revised NERC Definition—CWLD, Central and Southwest, SERC
City Water Light & Power—Revised NERC Definition—CWLP, City Water Light & Power, RFC
DECA, LLC—Arlington Valley—Revised NERC Definition—DEAA, CECD, LLC—Arlington Valley, WSCC
Michigan Electric Coordinated System—Detroit Edison—No Change
DECA, LLC—North Little Rock—Revised NERC Definition—DENL, ECD, LLC—North Little Rock, SERC
CECD, LLC—City of Ruston, LA—No Change
P.U.D. No. 1 of Douglas County—Revised NERC Definition—DOPD, P.U.D. No. 1 of Douglas County, WSCC
Dairyland Power Cooperative—Revised NERC Definition—DPC, Dairyland Power Cooperative, MRO
Duke Energy Corporation—Revised NERC Definition—DUK, Duke Power Company LLC (Transmission), SERC
Empire District Electric Co., The—No Change
Electric Energy, Inc.—No Change
Entergy—No Change
East Kentucky Power Cooperative, Inc.—Revised NERC Definition—EKPC, East Kentucky Power Cooperative, Inc., SERC
El Paso Electric—Revised NERC Definition—EPE, El Paso Electric, WSCC
ERCOT ISO—No Change
American Transmission Systems, Inc.—No Change

Florida Municipal Power Pool—No Change
Florida Power Corporation—No Change
Florida Power & Light—No Change
GridAmerica—No Change
Grant County PUD No.2—Revised NERC Definition—GCPD, Grant County PUD No.2, WSCC
Grand River Dam Authority—No Change
Great River Energy—Revised NERC Definition—GRE, Great River Energy, MRO
Great River Energy—No Change
Great River Energy—No Change
Great River Energy—No Change
CECD, LLC—Gila River—No Change
Georgia System Operations Corporation—No Change
Georgia Transmission Corporation—No Change
Gainesville Regional Utilities—No Change
Hoosier Energy—No Change
CECD, LLC—Harquahalla—No Change
Hydro—Quebec, TransEnergie—No Change
City of Homestead—No Change
Imperial Irrigation District—Revised NERC Definition—IID, Imperial Irrigation District, WSCC
City of Independence P&L Dept.—No Change
Illinois Power Co.—Revised NERC Definition—IP, Illinois Power Co., SERC
Idaho Power Company—Revised NERC Definition—IPCO, Idaho Power Company, WSCC
Indianapolis Power & Light Company—No Change
Illinois Power Co.—No Change
ISO New England Inc.—No Change
JEA—No Change
Board of Public Utilities—No Change
Kansas City Power & Light, Co—No Change
Lafayette Utilities System—No Change
Louisiana Generating, LLC—No Change
Los Angeles Department of Water and Power—Revised NERC Definition—LDWP, Los Angeles Department of Water and Power, WSCC
Louisiana Energy & Power Authority—No Change
Lincoln Electric System—No Change
LG&E Energy Transmission Services—Revised NERC Definition—LGEE, E.ON U.S. Services Inc., RFC
Montana—Dakota Utilities Co.—No Change
MidAmerican Energy Company—No Change
Michigan Electric Coordinated System—Revised NERC Definition—MECS, Michigan Electric Coordinated System, RFC
Madison Gas and Electric Company—Revised NERC Definition—MGE, Madison Gas and Electric Company, MRO
MHEB, Transmission Services—No Change
Midwest ISO—No Change
Westar Energy/Missouri Joint Municipal Electric Utility Commission—No Change
Minnesota Power, Inc.—No Change
Aquila Networks—MPS-Revised NERC Definition—MPS, Aquila Networks—Missouri Public Service, SPP
Muscatine Power and Water—No Change
New Brunswick Power Corporation—No Change
Nevada Power Company—Revised NERC Definition—NEVP, Nevada Power Company, WSCC
New Horizons Electric Cooperative—No Change
Northern Indiana Public Service Company—Revised NERC Definition—NIPS, Northern Indiana Public Service Company, RFC
Nebraska Public Power District—No Change
Utilities Commission, City of New Smyrna Beach—No Change
Northern States Power Company—Revised NERC Definition—NSP, Northern States Power Company, MRO
NorthWestern Energy—No Change
New York Independent System Operator—No Change
Oklahoma Gas and Electric—No Change
Ontario—Independent Electricity System Operator—No Change
OPPD CA/TP—No Change
Otter Tail Power Company—Revised NERC Definition—OTP, Otter Tail Power Company, MRO
Ohio Valley Electric Corporation—Revised NERC Definition—OVEC, Ohio Valley Electric Corporation, RFC
PacifiCorp—East—Revised NERC Definition—PACE, PacifiCorp—East, WSCC
PacifiCorp—West—Revised NERC Definition—PACE, PacifiCorp—West, WSCC
Portland General Electric—Revised NERC Definition—PGE, Portland General Electric, WSCC
PJM Interconnection—Revised NERC Definition—PJM, PJM Interconnection, RFC
Public Service Company of New Mexico—Revised NERC Definition—PNM, Public Service Company of New Mexico, WSCC
Public Service Company of Colorado—Revised NERC Definition—PSCO, Public Service Company of Colorado CA&TP, WSCC
Puget Sound Energy Transmission—Revised NERC Definition—PSEI, Puget Sound Energy Transmission, WSCC
CECD, LLC—Arkansas—No Change
Reedy Creek Improvement District—No Change
Santee Cooper—No Change
South Carolina Electric & Gas Company—No Change
Seattle City Light—Revised NERC Definition—SCL, Seattle City Light, WSCC
Seminole Electric Cooperative—No Change
Sunflower Electric Power Corporation—No Change
Southeastern Power Administration—Revised NERC Definition—SEHA, Southeastern Power Administration—Hartwell, SERC
Southeastern Power Administration—Revised NERC Definition—SERU, Southeastern Power Administration—Russell, SERC
Southeastern Power Administration—Revised NERC Definition—SETH, Southeastern Power Administration—Thermond, SERC
Southern Indiana Gas & Electric Co.—Revised NERC Definition—SIGE, Southern Indiana Gas & Electric Co., RFC
Southern Illinois Power Cooperative—Revised NERC Definition—SIPC, Southern Illinois Power Cooperative, SERC
South Mississippi Electric Power Association—No Change
South Mississippi Electric Power Association—No Change
Southern Minnesota Municipal Power Agency—No Change
Sacramento Municipal Utility District—Revised NERC Definition—SMUD, Sacramento Municipal Utility District, WSCC
Southern Company Services, Inc.—No Change
Southwestern Power Administration—No Change
SaskPower Grid Control Centre—No Change
Sierra Pacific Power Co.—Transmission—Revised NERC Definition—SPPC, Sierra Pacific Power Co.—Transmission, WSCC
Southwestern Public Service Company—No Change
Salt River Project—Revised NERC Definition—SRP, Salt River Project, WSCC
Southwest Power Pool—No Change
City of Tallahassee—No Change
Tampa Electric Company—No Change
Tucson Electric Power Company—Revised NERC Definition—TEPC, Tucson Electric Power Company, WSCC
North American Electric Reliability Council—No Change

Turlock Irrigation District—No Change
TRANSLink Management Company—No Change
Tacoma Power—Revised NERC Definition—TPWR, Tacoma Power, WSCC
Tennessee Valley Authority ESO—No Change
Upper Peninsula Power Co.—No Change
Western Area Power Administration—CM—Revised NERC Definition—WACM, Western Area Power Administration—Colorado-Missouri, WSCC
Western Area Power Administration—DSW—Revised NERC Definition—WALC, Western Area Power Administration—Lower Colorado, WSCC
Western Area Power Administration—UGPR—Revised NERC Definition—WAUE, Western Area Power Administration—Upper Great Plains East, MAPP
Western Area Power Administration—UGPR—Revised NERC Definition—WAUW, Western Area Power Administration—Upper Great Plains West, WSCC
Wisconsin Energy Corporation—Revised NERC Definition—WEC, Wisconsin Energy Corporation, RFC
Western Farmers Electric Cooperative—No Change
CECD, LLC—No Change
Aquila Networks—West Plains Dispatch—No Change
Aquila Networks—WPK—Revised NERC Definition—WPEK, Aquila Networks—Kansas, SPP
Wisconsin Public Service Corporation—Revised NERC Definition—WPS, Wisconsin Public Service Corporation, MRO
Westar Energy, Inc.—No Change
Yadkin, Inc.—No Change

HUB APPENDIX

ADHUB

Current Definition: None
Proposed Definition: The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the AEP/Dayton Hub.

AEP (into)

Current Definition: None
Proposed Definition: The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the AEP balancing authority.

AEPGenHub

Current Definition: None
Proposed Definition: The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the AEPGenHub.

COB

Current Definition: None
Proposed Definition: The set of delivery points along the California-Oregon commonly identified as and agreed to by the counterparties to constitute the COB Hub.

Cinergy (into)

Current Definition: None
Proposed Definition: The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Cinergy balancing authority.

Cinergy Hub (MISO)

Current Definition: None
Proposed Definition: The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as Cinergy Hub (MISO).

Comed (into)

Current Definition: None
Proposed Definition: The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Commonwealth Edison balancing authority.

Entergy (into)

Current Definition: None
Proposed Definition: The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Entergy balancing authority.

FE Hub

Current Definition: None
Proposed Definition: The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as FE Hub (MISO).

Four Corners

Current Definition: None
Proposed Definition: The set of delivery points at the Four Corners power plants commonly identified as and agreed to by the counterparties to constitute the Four Corners Hub.

Illinois Hub (MISO)

Current Definition: None
Proposed Definition: The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as Illinois Hub (MISO).

Mead

Current Definition: None
Proposed Definition: The set of delivery points at or near Hoover Dam commonly identified as and agreed to by the counterparties to constitute the Mead Hub.

Michigan Hub (MISO)

Current Definition: None
Proposed Definition: The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as Michigan Hub (MISO).

Mid-Columbia (Mid-C)

Current Definition: None
Proposed Definition: The set of delivery points along the Columbia River commonly identified as and agreed to by the counterparties to constitute the Mid-Columbia Hub.

Minnesota Hub (MISO)

Current Definition: None
Proposed Definition: The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as Minnesota Hub (MISO).

NEPOOL (Mass Hub)

Current Definition: None
Proposed Definition: The aggregated Locational Marginal Price nodes (''LMP'') defined by ISO New England Inc., as Mass Hub.

NIHUB

Current Definition: None
Proposed Definition: The aggregated Locational Marginal Price nodes (''LMP'') defined by PJM Interconnection, LLC as the Northern Illinois Hub.

NOB

Current Definition: None
Proposed Definition: The set of delivery points along the Nevada-Oregon border commonly identified as and agreed to by the counterparties to constitute the NOB Hub.

NP15

Current Definition: None
Proposed Definition: The set of delivery points north of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the NP15 Hub.

NWMT

Current Definition: None
Proposed Definition: The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Northwestern Energy Montana balancing authority.

PJM East Hub

Current Definition: None

Proposed Definition: The aggregated Locational Marginal Price nodes (''LMP'') defined by PJM Interconnection, LLC as the PJM East Hub.

PJM South Hub

Current Definition: None

Proposed Definition: The aggregated Locational Marginal Price nodes (''LMP'') defined by PJM Interconnection, LLC as the PJM South Hub.

PJM West Hub

Current Definition: None

Proposed Definition: The aggregated Locational Marginal Price nodes (''LMP'') defined by PJM Interconnection, LLC as the PJM Western Hub.

Palo Verde

Current Definition: None

Proposed Definition: The switch yard at the Palo Verde nuclear power station west of Phoenix in Arizona.

SOCO (into)

Current Definition: None

Proposed Definition: The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Southern Company balancing authority.

SP15

Current Definition: None

Proposed Definition: The set of delivery points south of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the SP15 Hub.

TVA (into)

Current Definition: None

Proposed Definition: The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Tennessee Valley Authority balancing authority.

ZP26

Current Definition: None

Proposed Definition: The set of delivery points associated with Path 26 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the ZP26 Hub.

TIME ZONE APPENDIX

AD—Never previously defined—Atlantic Daylight
AP—Never previously defined—Atlantic Prevailing
AS—Never previously defined—Atlantic Standard
CD—Never previously defined—Central Daylight
CP—Never previously defined—Central Prevailing
CS—Never previously defined—Central Standard
ED—Never previously defined—Eastern Daylight
EP—Never previously defined—Eastern Prevailing
ES—Never previously defined—Eastern Standard
MD—Never previously defined—Mountain Daylight
MP—Never previously defined—Mountain Prevailing
MS—Never previously defined—Mountain Standard
NA—Never previously defined—Not Applicable
PD—Never previously defined—Pacific Daylight
PP—Never previously defined—Pacific Prevailing
PS—Never previously defined—Pacific Standard
UT—Never previously defined—Universal Time

UNITS APPENDIX

KV—Never previously defined—kilovolt
KVA—Never previously defined—kilovolt amperes
KVR—Never previously defined—kilovar
KW—Never previously defined—kilowatt
KWH—Never previously defined—kilowatt hour
KW—DAY—Never previously defined—kilowatt day
KW—MO—Never previously defined—kilowatt month
KW—WK—Never previously defined—kilowatt week
KW—YR—Never previously defined—kilowatt year
MVAR—YR—Never previously defined—megavar year
MW—Never previously defined—megawatt
MWH—Never previously defined—megawatt hour
MW—DAY—Never previously defined—megawatt day
MW—MO—Never previously defined—megawatt month
MW—WK—Never previously defined—megawatt week
MW—YR—Never previously defined—megawatt year
RKVA—Never previously defined—reactive kilovolt amperes
FLAT RATE—Never previously defined—flat rate

RATE UNITS APPENDIX

$/KV—Never previously defined—dollars per kilovolt
$/KVA—Never previously defined—dollars per kilovolt amperes
$/KVR—Never previously defined—dollars per kilovar
$/KW—Never previously defined—dollars per kilowatt
$/KWH—Never previously defined—dollars per kilowatt hour
$/KW—DAY—Never previously defined—dollars per kilowatt day
$/KW—MO—Never previously defined—dollars per kilowatt month
$/KW—WK—Never previously defined—dollars per kilowatt week
$/KW—YR—Never previously defined—dollars per kilowatt year
$/MW—Never previously defined—dollars per megawatt
$/MWH—Never previously defined—dollars per megawatt hour
$/MW—DAY—Never previously defined—dollars per megawatt day
$/MW—MO—Never previously defined—dollars per megawatt month
$/MW—WK—Never previously defined—dollars per megawatt week
$/MW—YR—Never previously defined—dollars per megawatt year
$/MVAR—YR—Never previously defined—dollars per megavar year
$/RKVA—Never previously defined—dollars per reactive kilovar amperes
CENTS—Never previously defined—cents
CENTS/KVR—Never previously defined—cents per kilovolt amperes
CENTS/KWH—Never previously defined—cents per kilowatt hour
FLAT RATE—Never previously defined—rate not specified by any other units

[FR Doc. E7–8640 Filed 5–7–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8309–5]

Issuance of Final NPDES General Permit for Groundwater Remediation Discharge Facilities in Idaho (Permit No. ID–G91–0000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final NPDES general permit.

SUMMARY: The Director, Office of Water and Watersheds, EPA Region 10, is publishing notice of availability of a general National Pollutant Discharge Elimination System (NPDES) permit for groundwater remediation discharge

facilities in Idaho, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The general permit authorizes the discharge of treated groundwater from new and existing facilities to surface waters of the United States within the State of Idaho. Existing dischargers must apply for coverage within 90 days of the effective date of the permit by submitting a Notice of Intent (NOI) in accordance with the instructions in the permit. New dischargers whose operations commence after the effective date of the general permit must submit a NOI at least 30 days prior to the commencement of the discharge. A fact sheet has also been prepared which sets forth the principle factual, legal, policy, and scientific information considered in the development of the general permit.

The general permit contains a variety of technology-based and water quality-based effluent limitations for 55 pollutants of concern commonly found in contaminated groundwater, along with administrative and monitoring requirements, as well as other standard conditions, prohibitions, and management practices. Effluent limits are applied at end-of-pipe with no mixing zone. However, mixing zones are available on an individual basis at the discretion of the Idaho Department of Environmental Quality (IDEQ) for pollutants with water quality-based effluent limits. Mixing zones will be granted through an individual State certification that will be attached to EPA's authorization to discharge letter.

DATES: *Effective Date:* The general NPDES permit shall become effective on July 1, 2007.

Public Comment: Pursuant to section 402 of the Clean Water Act, EPA proposed the draft general permit and solicited comments in the **Federal Register** at 71 FR 34131–34132 (June 13, 2006). Notice of the draft permit was also published in the Idaho Statesman and the Coeur d'Alene Press. The 60 day comment period on the draft permit expired on August 14, 2006. In addition, copies of the draft permit were sent to known groundwater remediation facilities discharging to surface water in Idaho. Changes have been made from the draft permit to the final permit in response to comments received from facility representatives, government agencies, and trade groups. All comments, along with EPA's responses, are summarized in the Response to Comment document. The general permit, fact sheet, and Response to Comment document may be obtained by contacting Robert Rau; USEPA Region 10; 1200 6th Ave, OWW–130; Seattle, Washington 98101; or via e-mail at *rau.rob@epa.gov*. These documents may also be downloaded from the Region 10 Web site at *http://www.epa.gov/r10earth/waterpermits.htm* (click on general permits).

Other Legal Requirements

State Water Quality Standards and State Certification

Pursuant to Section 401 of the Clean Water Act, IDEQ has certified that the conditions of the general permit comply with State Water Quality Standards (IDAPA 58.01.02), including the State's antidegradation policy.

Endangered Species Act

EPA has determined that issuance of the groundwater remediation discharge general permit will have no affect any threatened or endangered species, designated critical habitat, or essential fish habitat.

Executive Order 12866

EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to Office of Management and Budget (OMB) review.

Paperwork Reduction Act

The information collection requirements of this general permit were previously approved by the OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not ''rules'' subject to the requirements of 5 U.S.C. 553(b), and is therefore not subject to the RFA.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, State, and local governments and the private sector. However, the general permit issued today is not a ''rule'' subject to the RFA, and is therefore not subject to the UMRA.

Appeal of Permit

Any interested person may appeal the general permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act. This appeal must be filed within 120 days of the permit effective date. Persons affected by the permit may not challenge the conditions of the permit in further EPA proceedings (see 40 CFR 124.19). Instead, they may either challenge the permit in court or apply for an individual NPDES permit.

Signed this 27th day of April, 2007.

Michael F. Gearheard,

Director, Office of Water and Watersheds.

[FR Doc. E7–8664 Filed 5–7–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, May 16, 2007, 9:30 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes,
2. Employment Testing and Screening—Invited Panelists, and
3. Full-Service Publication Storage and Distribution Center Contract.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above:

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

This Notice Issued May 4, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–2304 Filed 5–4–07; 3:15 pm]

BILLING CODE 6570–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 10, 2007, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- April 12, 2007 (Open and Closed).

B. New Business—Reports

- FCS Young, Beginning, and Small Farmer Mission Performance—2006 Results.
- Mission-Related Investments—2006 Annual Report.
- OE Quarterly Report.

Closed Session*

- OE Supervisory Activities.

Dated: May 4, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 07–2300 Filed 5–4–07; 1:48 pm]

BILLING CODE 6705–01–P

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 9, 2007.

ADDRESSES: You may submit comments, identified by FR 2046 (OMB No. 7100–0289) or FR 4006 (OMB No. 7100–0129), by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E–mail: *regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.
- FAX: 202–452–3819 or 202–452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission, supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Report of Selected Balance Sheet Items for Discount Window Borrowers

Agency form number: FR 2046

OMB control number: 7100–0289

Frequency: On occasion

Reporters: Depository institutions

Annual reporting hours: 894

Estimated average hours per response: Primary and Secondary Credit, 0.75 hour; Seasonal Credit, 0.25 hour

Number of respondents: 171

General description of report: This information collection is required to obtain or retain a benefit pursuant to section 10B of the Federal Reserve Act [12 U.S.C. § 347b] and is given confidential treatment [5 U.S.C. § 552(b)(4)].

Abstract: The Federal Reserve(s Regulation A, Extensions of Credit by Federal Reserve Banks, requires that the Federal Reserve review balance sheet data in determining whether to extend credit and to help ascertain whether undue use is made of such credit. Borrowers report certain balance sheet data for a period that encompasses the dates of borrowing. There are no proposed changes to the FR 2046; however, the Federal Reserve is clarifying the instructions.

2. Report title: Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted

Agency form number: FR 4006

OMB control number: 7100–0129

Frequency: Annual

Reporters: Bank holding companies

Annual reporting hours: 180 hours

Estimated average hours per response: 5 hours

Number of respondents: 36

General description of report: This information collection is required to obtain a benefit pursuant to section 4(c)(2) of the Bank Holding Company Act [12 U.S.C. § 1843(c)(2)] and may be given confidential treatment upon request. The Federal Reserve has established a procedure for requesting an extension in its Regulation Y [12 C.F.R. § 225.22(d)(1)(ii)].

Abstract: A bank holding company that acquired voting securities or assets through foreclosure in the ordinary course of collecting a debt previously contracted may not retain ownership of those shares or assets for more than two years without prior Federal Reserve approval. There is no formal reporting form, and each request for extension must be filed at the appropriate Reserve Bank of the bank holding company. The Federal Reserve uses the information provided in the request to fulfill its statutory obligation to supervise bank holding companies.

Board of Governors of the Federal Reserve System, May 3, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–8753 Filed 5–7–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 72 FR 24311, May 2, 2007.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 12 p.m. Monday, May 7, 2007.

CHANGES IN THE MEETING: Change in the time of the *closed* meeting to 10 a.m., Monday, May 7, 2007.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 4, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–2301 Filed 5–4–07; 2:20 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Chartering Value Exchanges for Value-driven Health Care.'' The information collection will take the form of narrative responses to semiannual Requests for Proposals for participation in a learning network of model multi-stakeholder community health care collaboratives operated to measure, report, and improve the quality and cost of available healthcare. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by July 9, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room # 5036, Rockville, MD 20850.

Copies of the proposed collection plans, application form, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Chartering Value Exchanges for Value-driven Healthcare''

This project proposes to twice annually post a public call for parties interested in becoming chartered as Value Exchanges for Value-driven Healthcare, described in the Background Section below. Anticipated benefits of being a chartered Value Exchange include (1) participation in an AHRQ-managed Learning Network and (2) eligibility to request Medicare-inclusive multi-payer patient de-identified individual physician-level performance measurement results.

Background

The Secretary of Health and Human Services has created and is implementing a Value-driven Healthcare Initiative to enhance person and population-centered care by improving the quality of healthcare services and reducing healthcare costs. Related HHS goals and objectives reflect the President's Executive Order and encompass (1) promotion of the

establishment of health information technology interoperability standards for exchanging price and quality healthcare data; (2) promotion of the availability and use of transparent, nationally endorsed, consensus-derived quality measures; (3) promotion of the availability and use of transparent, nationally endorsed, consensus-derived measures of price/cost; and, (4) promotion of the use of provider and consumer incentives for high quality and cost efficient healthcare.

This Initiative's design is based on three fundamental principles. The first is that at its core, healthcare is ''local''—provided in uniquely constituted cultural and market-based environments. As such, improving the value of healthcare requires a critical mass of community stakeholders (public and private purchasers, health plans, providers, and consumers), as well as other relevant community entities (e.g., local information exchange organizations, State data organizations) investing their time and resources toward shared cost and quality improvement goals. We refer to such representative quality improvement community organizations as local multi-stakeholder collaboratives. Scattered across the country there are community collaboratives in various stages of development ranging from mature multi-stakeholder collaboratives to communities where only a limited number of organizations within a single stakeholder group or a limited number of stakeholder groups are working together.

The second principle is that broad access to accurate, meaningful information will improve the value of healthcare services by (1) stimulating provider improvement, (2) engaging consumers in provider selection and treatment choices, and (3) enabling purchasers to align consumer and provider incentives. Generating the information needed to accomplish this is maximized when performance measures can be calculated based on all payer data.

The third principle is that establishing a nation-wide learning network will foster market-based healthcare reform. Learning networks are an evidence-based organizational mechanism to achieve rapid identification, dissemination and adoption of best practices. They are comprised of individuals or groups focused on common broad goals.

Based on the above, AHRQ plans to establish a nation-wide learning network of mature community-based multi-stakeholder healthcare quality improvement collaboratives. Goals of the Learning Network include facilitating collaborative production of public reports, fostering pay for performance, fostering consumer financial incentives, and ultimately, improving quality. AHRQ will issue semi-annual public Requests for Proposals (RFP) and conduct a selection process immediately thereafter to identify and charter mature multi-stakeholder collaboratives as Value Exchanges. To be eligible, interested parties must first be recognized by HHS Secretary Michael O. Leavitt as a Community Leader for Value-driven Healthcare.

For additional information on Community Leader recognition, see *http://www.hhs.gov/transparency/communities/communityleaders/communities.html*.

Method of Collection

Each RFP will be posted on the AHRQ public Web site (*www.ahrg.gov*) with a link to the AHRQ site on the OS transparency Web site as well. The RFP instructions will direct interested parties to electronically submit narrative information (maximum 3000 words) to AHRQ that describes their capacity or plans to develop their capacity to do each of the following:

A. Facilitate collection of provider-level measures across the six performance domains identified by the Institute of Medicine (IOM) (safety, timeliness, effectiveness, efficiency, equitableness, patient-centeredness).

B. Use (or promote the use of) transparent, nationally endorsed, consensus-derived performance measures and consumers' cost for public/consumer reporting.

C. Use (or promote the use of) transparent, nationally endorsed, consensus-derived performance measures to reward and foster better performance.

D. Use (or promote the use of) transparent, nationally endorsed, consensus-derived performance measures for improvement by directly informing providers of their results.

E. Foster collaboration across multiple stakeholders (public and, private purchasers, health plans, providers, and consumers), as well as other relevant community entities (e.g., local information exchange organizations, State data organizations) in the community of interest and serve as a hub for sharing information and dialogue.

F. Promote the use of interoperable health information technologies for measurement as appropriate and collaborate with health information sharing processes and in the adoption of these technologies.

G. Support knowledge transfer—maintain transparent processes and share lessons learned.

H. Conduct ongoing evaluation and improvement of efforts.

At a minimum, successful applicants will demonstrate the following:

A1. For those conducting or overseeing measurement/auditing and aggregation of data across multiple payers, the ability to do so.

A2. For those receiving already aggregated data and calculated performance results from a source (e.g., national aggregators), the ability to effectively implement the use of these results.

B. The ability to manage collaborative processes that engage all critical stakeholders.

C. Organizational capacity to meet A.1 or A.2 and B above. At a minimum the following organizational characteristics or capacities will be required:

- Non-profit status.
- Staff/consultant arrangements to provide needed expertise.
- History of raising funds or in-kind support uom multiple stakeholders.
- Ability to manage collaborative, multi-stakeholder projects and finances.
- Ability to track progress in meeting individual collaborative goals, which may include, for example, producing public reports, or fostering pay for performance or consumer incentives.

The request for proposals will be open for two months.

A review committee will be assembled and have the following composition:

- Three experts representing institutional healthcare purchaser stakeholder perspectives.
- Three experts representing health plan stakeholder perspectives.
- Three experts representing individual consumer stakeholder perspectives.
- Three experts representing providers with at least two of the providers being physicians.
- AHRQ staff experienced in working with community collaboratives.

Proposals will be reviewed by review teams comprised of at least one representative from each stakeholder group listed above and at least one AHRQ staff person. All proposals will be reviewed in the 6 weeks following the closing of the application period.

Estimated Annual Respondent Burden

EXHIBIT 1.—ESTIMATE OF COST BURDEN TO RESPONDENTS

Data collection effort	Number of estimated respondents	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate	Estimated annual cost burden to respondents
Draft narrative response to RFP by Collaborative Manager	50	8	400	$34.67	$13,868
Narrative reviews by 2 members of Collaborative executive committee	100	1	100	57.90	5,790
Narrative revisions by Collaborative Manager	50	8	400	34.67	13,868
Assembly of narrative with any supporting documents by Collaborative Assistant	50	2	100	12.58	1,258
Total	250		1,000		34,784

This information collection will not impose a cost burden on the respondent beyond that associated with the above estimates of the time needed to provide the application-requested information, No additional costs to respondents are anticipated, e.g., for capital equipment, software, etc.

Estimated Costs to the Federal Government

The total cost to the government for its proposal review activity is estimated to be $500,000 annually.

Request for Comments

In accordance with the above-cited legislation, comments on the AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of health care improvement and information dissemination functions of AHRQ, including whether the information requested will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of information to be collected; and, (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 1, 2007

Carolyn M. Clancy,

Director.

[FR Doc. 07–2268 Filed 5–7–07: 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: June 14–15, 2007 (Open from 8 a.m. to 8:15 a.m. on June 14 and closed for reminder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

2. *Name of Subcommittee:* Health Systems Research.

Date: June 14–15, 2007 (Open from 8 a.m. to 8:15 a.m. on June 14 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

3. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: June 21–22, 2007 (Open from 8 a.m. to 8:15 a.m. on June 21 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

4. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: June 28–29, 2007 (Open from 8 a.m. to 8:15 a.m. on June 28 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: April 23, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–2240 Filed 5–7–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–230]

Public Health Assessments and Health Consultations Completed January 2007–March 2007

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments and health consultations during the period from January 1, 2007 through March 31, 2007. This list includes sites that are on or proposed for inclusion on the National

Priorities List (NPL) and includes sites for which assessments or consultations were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: William Cibulas, Jr., PhD, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments and health consultations was published in the **Federal Register** on March 20, 2007 [72 FR 13115]. This announcement is the responsibility of ATSDR under the regulation ''Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities'' [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and health consultations are available for public inspection at the ATSDR Records Center, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. Public health assessments and health consultations are often available for public review at local repositories such as libraries in corresponding areas. Many public health assessments and health consultations are available through ATSDR's Web site at *http://www.atsdr.cdc.gov/HAC/PHA/*. In addition, the completed public health assessments are available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553–6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between January 1, 2007, and March 31, 2007, public health assessments were issued for the sites listed below:

NPL and Proposed NPL Sites

Georgia

Alternate Energy Resources, Inc.—(PB2007–106100); January 25, 2007.

Idaho

Bunker Hill Mining and Metallurgical Complex Operable Unit 3 (a/k/a Coeur D'Alene River Basin)—(PB2007–107841); March 26, 2007.

Illinois

Hegeler Zinc—(PB2007–106152); February 2, 2007.

New Hampshire

Former Chlor Alkali Facility Below Saw Mill Dam—(PB2007–106545); February 7, 2007.

Tennessee

Evaluation of Current (1990–2003) and Future Chemical Exposures in the Vicinity of the Oak Ridge Reservation, U.S. Department of Energy—(PB2007–106119); January 31, 2007.

Texas

Sandy Beach Road Groundwater Plume—(PB2007–104896); January 17, 2007.

West Virginia

Ravenswood PCE Ground Water Plume Site—(PB2007–107220); March 14, 2007.

Non-NPL Petitioned Sites

Florida

Coronet Industries, Incorporated (a/k/a Borden Feed Phosphate Complex)—(PB2007–104895); January 18, 2007.

Massachusetts

Evaluation of Cancer Incidence, 1982–2000, and Environmental Concerns Related to the Bird Landfill—(PB2007–106569); February 15, 2007.

Texas

East Kelly Air Force Base—(PB2007–106614); February 27, 2007.

Base de Fuerza Aerea, East Kelly (Spanish Version)—(PB2007–107191); February 27, 2007.

Health Consultations Completed or Issued

Between January 1, 2007, and March 31, 2007, health consultations were issued for the sites listed below:

Arizona

Evaluation of Primary Metals in Private Drinking Water Wells in the Walker Area; March 6, 2007.

Lone Butte Industrial Park—Perchlorate; March 8, 2007.

Lone Butte Industrial Park—TCE; January 10, 2007.

North Indian Bend Wash, Area 7 Groundwater Extraction and Treatment Facility; March 8, 2007.

California

Evaluation of Indoor Air Migration in Building On-Site and Adjacent to the Omega Chemical Site; March 20, 2007.

Klau/Buena Vista Mines—Evaluation of Fish Consumption from Lake Nacimiento—Exposure Investigation Report; February 6, 2007.

Colorado

A1 Stop Laundry and Dry Cleaners—Indoor Air Quality Assessment of a Residential Neighborhood Overlying a Tetrachloroethylene (PCE) Groundwater Plume; February 20, 2007.

Connecticut

Raymark Industries, Inc.—Evaluation of Soils at Selected School/Daycare Properties Located Near Raymark Industries Waste Disposal Areas; February 13, 2007.

Somers Plating, Inc.—Public Health Evaluation of Soil Sampling Data for Lagoon 3; February 13, 2007.

Florida

Former Royal Oaks Charcoal Facility—Air Testing; January 17, 2007.

Lincoln Park Complex, Durrs Neighborhood (Off-Site) Soil; March 27, 2007.

Georgia

Miller Bottom Road Municipal Solid Waste Landfill; March 28, 2007.

Idaho

Sunnyside Area Groundwater Contamination—Evaluation of Antibiotic, Steroid Hormone & Nitrate Compounds in Groundwater Near a Confined Animal Feeding Operation (CAFO); March 19, 2007.

Indiana

Rumpke Medora Landfill—Exposure Investigation Report; February 1, 2007.

Louisiana

Bayou Bonfouca—Post-Hurricane Evaluation; January 24, 2007.

Michigan

Kingsford Middle School; March 30, 2007.

Ontonagon High School Mercury Release; March 30, 2007.

Nebraska

Arsenic in Soil in East Omaha, Nebraska; March 20, 2007.

New Jersey

Celotex Corporation; January 10, 2007.

North Carolina

APAC Carolina Inc. and Associated Asphalt Inc., Jake Alexander Boulevard; February 14, 2007.

Weyerhaeuser Pulp and Paper Mill—Exposure Investigation Report; March 22, 2007.

Pennsylvania

Ivy Industrial Park Site—Public Health Evaluation of Residential Indoor Air and Well Water Sample Results; March 5, 2007.

Remacor Site; January 10, 2007.

Tennessee

Mr. Zip Convenience Store; March 14, 2007.

Texas

Former Delroc Oil Refinery/Woodwind Lakes Subdivision; February 23, 2007.

Utah

Vermiculite Intermountain and Intermountain Products, Inc.—Epidemiological Investigation of Human Exposure to a Contaminated Vermiculite Ore Processing Site in Utah; March 1, 2007.

Washington

Home Heating Oil Release, Technical Review of the Site Hazard Assessment; March 29, 2007.

Wisconsin

Amery-Dresser Trail; January 23, 2007.

Dated: May 2, 2007.

Kenneth Rose,

Acting Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E7–8758 Filed 5–7–07; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, CMS is proposing to modify or alter existing system of records titled ''Complaints Against Health Insurance Issuers and Health Plans (CAHII),'' System No. 09–70–9005, established at 66 FR 9858, (February 12, 2001). We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the Health Care Financing Administration systems of records. The new assigned identifying number for this system should read: System No. 09–70–0516.

We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will delete routine use number 2 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

We propose to add 2 new routine uses authorizing disclosure to support a CMS contractor, consultant, or a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to combat fraud, waste, and abuse in certain health care programs. The new routine use will be published as routine use number 6. We will add a second new routine use to support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States, when disclosure is deemed reasonably necessary by CMS to combat fraud, waste, and abuse in certain health care programs. This new routine use will be published as routine use number 7. We will broaden the scope of this system by including the section titled ''Additional Circumstances Affecting Routine Use Disclosures,'' that addresses ''Protected Health Information (PHI)'' and ''small cell size.'' The requirement for compliance with HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' apply when ever the system collects or maintain PHI. This system may contain PHI. In addition, our policy to prohibit release if there is a possibility that an individual can be identified through ''small cell size'' will apply to the data disclosed from this system.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this system is to collect and maintain information initiated by consumers complaints/reports to CMS that their health insurance issuers and/or non-Federal governmental health plans are in violation of one or more of the following statutes: §§ 2722 and 2761 of the Public Health Service (PHS) Act; the Mental Health Parity Act of 1996 (MHPA); the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA); and, the Women's Health and Cancer Rights Act of 1998 (WHCRA). Information maintained in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to benefits under the Medicare program; (4) inform a health insurance issuer and/or health plan who has been named in a complaint/inquiry and is believed to be potentially in violation of relevant portions of the PHS; (5) support litigation involving the Agency; and (6) combat fraud, waste, and abuse in certain health benefits programs. We have provided background information about this new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on

all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Dates:* CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 12, 2007. To ensure that all parties have adequate time in which to comment, the new SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.—3 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Dave Mlawsky, Health Insurance Specialist, Division of Employer Operations, Employer Policy and Operations Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, Mail Stop S3–16–26, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6851 or e-mail *david.mlawsky@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of this system is given under §§ 2722 and 2761 of the Public Health Service (PHS) Act; the Mental Health Parity Act of 1996 (MHPA); the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA); and the Women's Health and Cancer Rights Act of 1998 (WHCRA) with respect to non-Federal governmental plans.

B. Collection and Maintenance of Data in the System

This system will collect and maintain individually identifiable and other data collected on individuals/consumers who make complaints/inquiries to CMS that their health insurance issuers and/or non-Federal governmental health plans are in violation of the PHS.

The system contains information such as consumer's name, address, phone number, the name and address of their health plan or health insurance issuer, their plan ID number or social security number, the nature of their complaint/inquiry against their health plan or issuer, and any medical and other additional information that is necessary for CAHII to help resolve the consumer's complaint.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release CAHII information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of CAHII. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; e.g., to collect and maintain information initiated by consumers complaints/reports to CMS that their health insurance issuers and/or non-Federal governmental health plans are in violation of the PHS;

2. Determines that the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

a. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

b. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and;

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Modified Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or grantees that have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need access to the records in order to assist CMS. We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant, or grantee whatever information is necessary for the contractor, consultant, or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant, or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Refer a complaint or inquiry with respect to Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Mental Health Parity Act of 1996 (MHPA), the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), and the Women's Health and Cancer Rights Act of 1998 (WHCRA).

CAHII shares enforcement responsibilities with the U.S. Department of Labor, the U.S. Department of Treasury and State regulatory bodies with respect to Title I of HIPAA, MHPA, NMHPA and WHCRA. CAHII's enforcement responsibilities are discussed in the ''Description of the New System of Records'' section above. The Department of Labor enforces Title I of HIPAA, MHPA, NMHPA and WHCRA with respect to private group health plans. The Department of Treasury may levy excise taxes against private group health plans that do not comply with these Acts, except for WHCRA. In States that are substantially enforcing Title I of PHS, MHPA, NMHPA and WHCRA, the appropriate State agency enforces these provisions with respect to health insurance issuers.

Occasionally, CAHII will receive an inquiry or complaint related to one of these four Acts in situations where it is within Labor's or Treasury's or a State's, and not CAHII's, jurisdiction to resolve. In such cases, CAHII must disclose information from the system of records to the appropriate agency so they can perform their enforcement function.

Other Federal or state agencies in their administration of a Federal health program may require CAHII information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, other state agencies in their administration of a Federal health program may require CAHII information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state.

3. To assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third parties contacts require CAHII information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

4. To inform a health insurance issuer and/or health plan, who has been named in a complaint and is believed to be potentially in violation of relevant portions of the PHS Act.

When individuals file complaints or inquiries asking CAHII to clarify or enforce their rights under Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Mental Health Parity Act of 1996 (MHPA), the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), and the Women's Health and Cancer Rights Act of 1998 (WHCRA), CAHII often must disclose information maintained in this system of records to the individual's health insurance issuer or health plan in order for CAHII to satisfy its statutory charge to enforce these Federal Acts with respect to non-Federal governmental health plans in all States and health insurance issuers in some States.

5. To assist the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

6. To support a CMS contractor that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste or abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in a program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect,

investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such programs.

Other agencies may require CAHII information for the purpose of combating fraud, waste or abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512 (a) (1).)

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified or Altered System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: April 12, 2007.

Charlene Frizzera,

Acting Chief Operating Officer Centers for Medicare & Medicaid Services.

System No. 09–70–0516.

SYSTEM NAME:

• Complaints Against Health Insurance Issuers and Health Plans (CAHII),'' HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various other contractor locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on individuals/consumers who make complaints/inquiries to CMS that their health insurance issuers and/or non-Federal governmental health plans are in violation of the PHS ACT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information such as consumer's name, address, phone number, the name and address of their health plan or health insurance issuer, their plan ID number or social security number, the nature of their complaint/inquiry against their health plan or issuer, and any medical and other additional information that is necessary for CAHII to help resolve the consumer's complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system is given under §§ 2722 and 2761 of the Public Health Service (PHS) Act; the Mental Health Parity Act of 1996 (MHPA); the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA); and the Women's Health and Cancer Rights Act of 1998 (WHCRA) with respect to non-Federal governmental plans.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to collect and maintain information initiated by consumers complaints/reports to CMS that their health insurance issuers and/or non-Federal governmental health plans are in violation of one or more of the following statutes: §§ 2722 and 2761 of the Public Health Service (PHS) Act; the Mental Health Parity Act of 1996 (MHPA); the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA); and , the Women's Health and Cancer Rights Act of 1998 (WHCRA). Information maintained in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to benefits under the Medicare program; (4) inform a health insurance issuer and/or health plan who has been named in a complaint/inquiry and is believed to be potentially in violation of relevant portions of the PHS ACT; (5) support litigation involving the Agency; and (6) combat fraud, waste, and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or grantees that have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need access to the records in order to assist CMS.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Refer a complaint or with respect to Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Mental Health Parity Act of 1996 (MHPA), the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), and the Women's Health and Cancer Rights Act of 1998 (WHCRA).

3. To assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

4. To inform a health insurance issuer and/or health plan, who has been named in a complaint and is believed to be potentially in violation of relevant portions of the PHS Act.

5. To assist the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. any employee of the Agency in his or her official capacity, or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To support a CMS contractor that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

7. To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; e.g., consumer's name or health insurance claims number, if, applicable.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the

Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period not to exceed 6 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Policy, Employer Policy and Operations Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, employee identification number, tax identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

The data collected and maintained in this system are retrieved from individuals/consumers who file complaints/reports to CMS that their health insurance issuers and/or non-Federal governmental health plans are in violation of the PHS ACT.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–8757 Filed 5–7–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified System of Records

AGENCY: Department of Health and Human Services (HHS), Center for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a system titled, ''End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS), System No. 09–70–0520,'' and last modified at 67 Fed. Reg. 41244 (June 17, 2002). This system contains records on individuals with ESRD who are entitled to receive Medicare benefits or who are treated by Department of Veteran Affairs (DVA) health care facilities. We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. The modified routine use will remain as routine use number 1. For further clarity, we propose to separate existing routine use number 3 that permit disclosures to ESRD Network Organizations and to Quality Improvement Organizations into separate routine uses. The activities performed by the 2 different type organizations are not so closely related that they should be combined in one routine use. The modified routine use will be republished as routine use number 3 for ESRD Network Organizations and routine use number 4 for Quality Improvement Organizations. We will delete routine use number 5 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

We propose to broaden the scope of the disclosure provisions of this system by adding a routine use to permit the release of priority personal information to complete a transfer out event from a losing ESRD facility and/or a transfer-in event to a gaining ESRD facility to: (1) Contribute to the accuracy of CMS' proper payment of Medicare benefits; and (2) enable such facilities to ensure the proper transfer of health records, and/or as necessary to enable such a facility to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist ESRD programs which may require PMMIS information for purposes related to this system. Information will be released to these organizations upon specific request, and only for those organizations if they meet the following requirements: (1) Provide an attestation or other qualifying information that they are providing assistance to qualified ESRD beneficiaries; (2) submit a report of the transfer-in or transfer-out event; (3) safeguard the confidentiality of the data and prevent unauthorized access; and (4) complete a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions. The PMMIS data will provide the ESRD facility with information regarding its enrollees' enrollment status, transplant activities, dialysis activities, and Medicare utilization; facilitate the facility's required utilization reviews and medication management program activities; and assist in quality of care issues as they relate to the beneficiary. The added routine use will be numbered as routine use number 6.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system of records is to maintain information on Medicare ESRD beneficiaries, non-Medicare ESRD patients, Medicare approved ESRD hospitals and dialysis facilities, and Department of Veterans Affairs (DVA) patients. The ESRD/PMMIS is used by CMS and the renal community to perform their duties and responsibilities in monitoring the Medicare status, transplant activities, dialysis activities, and Medicare utilization (inpatient and physician/supplier bills) of ESRD patients and their Medicare providers, as well as in calculating the Medicare covered periods of ESRD. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support an ESRD Network Organizations; (4) assist Quality Improvement Organizations (QIO) to implement quality improvement programs; (5) facilitate research on the quality and effectiveness of care provided and payment related projects; (6) permit the release of priority personal information to complete a transfer out event and/or a transfer-in event; (7) support litigation involving the agency; and, (8) combat fraud, waste, and abuse in certain health benefits programs. We have provided background information about the new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See Effective Dates section for comment period.

DATES: *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 12, 2007. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Dennis Stricker, Director, Information Support Group, Office of Clinical Standards and Quality, CMS, Room S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–3116. The e-mail address is *dennis.stricker@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

The statutory authority for this system is given under the provisions of Sections 226A, 1875, and 1881 of the Social Security Act (the Act) (Title 42 United States Code (U.S.C.), sections 426–1, 1395ll, and 1395rr).

B. Collection and Maintenance of Data in the System

This system will collect and maintain individually identifiable and other data collected on individuals with ESRD who receive Medicare benefits or who are treated by DVA health care facilities. The system contains information on both the beneficiary and the provider of services.

The collected information will include, but is not limited to beneficiary/patient medical records, claims data, and payment data collected from several non-reimbursement data collection instruments and Medicare bills. The provider of services' name, address, Medicare identification number, types of services provided, certification and or termination date, and ESRD network number.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release PMMIS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of PMMIS.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., to maintain information on Medicare ESRD beneficiaries, non-Medicare ESRD patients, Medicare approved ESRD hospitals and dialysis facilities, and Department of Veterans Affairs (DVA) patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the

following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor, consultant or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Determine compliance with the Federal conditions that an ESRD facility must meet in order to participate in Medicare.

Other Federal or State agencies in their administration of a federal health program may require PMMIS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, other state agencies in their administration of a Federal health program may require PMMIS information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

In addition, disclosure under this routine use shall be used by state agencies pursuant to agreements with the HHS for determining Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under titles IV, XVIII, and XIX of the Act, and for the administration of the Medicare program. Data will be released to the state only on those individuals who are patients under the services of a program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require PMMIS information for auditing eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system of records.

3. To ESRD Network Organizations in connection with review of claims, or in connection with studies or quality improvements projects or other review activities, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

ESRD Network Organizations will work to implement quality improvement programs, provide consultation to CMS, its contractors, and its state agencies, in connection with studies or quality improvements projects or in performing affirmative outreach activities to individuals.

4. To Quality Improvement Organizations in connection with review of claims, or in connection with studies or quality improvements projects or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and its state agencies, in connection with studies or quality improvements projects or other review activities.

The QIOs will assist the state agencies in related monitoring and enforcement efforts; assist CMS and intermediaries in program integrity assessment; and prepare summary information for release to CMS.

5. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The PMMIS data will provide for research or support of evaluation projects and a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policies that govern their care.

6. To assist with a transfer out event from a losing ESRD facility and/or a transfer-in event to a gaining ESRD facility to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits; and

b. Enable such facilities to ensure the proper transfer of health records, and/or as necessary to enable such a facility to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and

c. Assist ESRD programs which may require PMMIS information for purposes related to this system.

Information will be released to these facilities upon specific request, and only for those facilities if they meet the following requirements:

a. Provide an attestation or other qualifying information that they are providing assistance to qualified ESRD beneficiaries/patients;

b. Submit a report of the transfer-in or transfer-out event with the following required priority information: Name, address, HICN or SSN, date of birth;

c. Safeguard the confidentiality of the data and prevent unauthorized access; and

d. complete a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

Both the gaining and losing facilities may require priority information submitted as a transfer-in or transfer-out report to implement quality transfer of beneficiaries from one facility to another; provide consultation to CMS, its contractors, and its state agencies, in connection with transfer of patients.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or

adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

8. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, or abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require PMMIS information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 Fed. Reg. 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors of such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: April 12, 2007.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

System No. 09–70–0520.

SYSTEM NAME:

''ESRD Program Management and Medical Information (PMMIS),'' HHS/CMS/OCSQ.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various other contractor locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on individuals with ESRD who receive Medicare benefits or who are treated by DVA health care facilities. The system contains information on both the beneficiary and the provider of services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will include, but is not limited to

beneficiary/patient medical records, claims data, and payment data collected from several non-reimbursement data collection instruments and Medicare bills. The provider of services' name, address, Medicare identification number, types of services provided, certification and or termination date, and ESRD network number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under the provisions of Sections 226A, 1875, and 1881 of the Social Security Act (the Act) (Title 42 United States Code (U.S.C.), sections 426–1, 1395ll, and 1395rr).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to maintain information on Medicare ESRD beneficiaries, non-Medicare ESRD patients; Medicare approved ESRD hospitals and dialysis facilities, and Department of Veterans Affairs (DVA) patients. The ESRD/PMMIS is used by CMS and the renal community to perform their duties and responsibilities in monitoring the Medicare status, transplant activities, dialysis activities, and Medicare utilization (inpatient and physician/supplier bills) of ESRD patients and their Medicare providers, as well as in calculating the Medicare covered periods of ESRD. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support an ESRD Network Organizations; (4) assist Quality Improvement Organizations (QIO) to implement quality improvement programs; (5) facilitate research on the quality and effectiveness of care provided and payment related projects; (6) permit the release of priority personal information to complete a transfer out event and/or a transfer-in event; (7) support litigation involving the agency; and, (8) combat fraud, waste, and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Determine compliance with the Federal conditions that an ESRD facility must meet in order to participate in Medicare.

3. To ESRD Network Organizations in connection with review of claims, or in connection with studies or quality improvements projects or other review activities, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

4. To Quality Improvement Organizations in connection with review of claims, or in connection with studies or quality improvements projects or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

5. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

6. To assist with a transfer out event from a losing ESRD facility and/or a transfer-in event to a gaining ESRD facility to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits; and

b. Enable such facilities to ensure the proper transfer of health records, and/or as necessary to enable such a facility to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and

c. Assist ESRD programs which may require PMMIS information for purposes related to this system.

Information will be released to these facilities upon specific request, and only for those facilities if they meet the following requirements:

d. Provide an attestation or other qualifying information that they are providing assistance to qualified ESRD beneficiaries/patients;

e. Submit a report of the transfer-in or transfer-out event with the following required priority information: Name, address, HICN or SSN, date of birth;

f. Safeguard the confidentiality of the data and prevent unauthorized access; and

g. Complete a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

8. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect,

investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures: To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; e.g., beneficiary name or HICN, and unique provider identification number.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records will be retained until an approved disposition authority is obtained from the National Archives and Records Administration. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Information Support Group, Office of Clinical Standards and Quality, CMS, Room S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, employee identification number, tax identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a) (2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

The data contained in these records are obtained from Medicare ESRD medical evidence reports, kidney transplant reports, ESRD beneficiary reimbursement method selection forms, ESRD death notification forms, Medicare bills, CMS Medicare Master files, ESRD facility surveys, ESRD facility certification notices, and the Medicare/Medicaid Automated Certification System (MMACS).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

1. ESRD Network of New England, Incorporated, Post Office Box 9484, New Haven, Connecticut 06534.
2. ESRD Network of New York, Incorporated, 1249 Fifth Avenue, A–419, New York, New York 10029.
3. Trans-Atlantic Renal Council, Cranbury Plaza, 2525 Route 130—Building C, Cranbury, New Jersey 08512–9595.
4. ESRD Network Organization Number 4, 200 Lothrop Street, Pittsburgh, Pennsylvania 15213–2582.
5. Mid-Atlantic Renal Coalition, 1527 Huguenot Road, Midlothian, Virginia 23113.
6. Southeastern Kidney Council, Incorporated, 1000 Saint Albans Drive, Suite 270, Raleigh, North Carolina 27609.
7. ESRD Network of Florida, Incorporated, One Davis Boulevard, Suite 304, Tampa, Florida 33606.
8. Network 8, Incorporated, Post Office Box 55868, Jackson, Mississippi 39296–5868.
9 & 10. The Renal Network, Incorporated, 911 East 86th Street, Suite 202, Indianapolis, Indiana 46240.
11. Renal Network of the Upper Midwest, 970 Raymond Avenue #205, Saint Paul, Minnesota 55114.
12. ESRD Network Number 12, 7509 NW T Tiffany Spring Parkway, Suite 105, Kansas City, Missouri 64153.
13. ESRD Network Organization Number 13, 6600 North Meridan Avenue, Suite 155, Oklahoma City, Oklahoma 73116–1411.
14. ESRD Network of Texas, Incorporated, 14114 Dallas Parkway, Suite 660, Dallas, Texas 75240–4349.
15. Intermountain ESRD Network, Incorporated, 1301 Pennsylvania Street, Suite 220, Denver, Colorado 80203–5012.
16. Northwest Renal Network, 4702 42nd Avenue, Seattle, Washington 98116.
17. TransPacific Renal Network, 25 Mitchell Boulevard, Suite 7, San Rafael, California 94903.
18. Southern California Renal Disease Council, 6255 Sunset Boulevard, Suite 2211, Los Angeles, California 90082.

[FR Doc. E7–8759 Filed 5–7–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0349]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Drug Administration Survey of Current Manufacturing Practices in the Food Industry

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 June 7, 2007.

ADDRESSES: 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: FDA Desk Officer, FAX: 202–395–6974. All comments should be identified with the OMB control number, ''0910–NEW'' and title, ''FDA Survey of Current Manufacturing Practices in the Food Industry.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

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.

FDA Survey of Current Manufacturing Practices in the Food Industry—(OMB Control Number 0910–NEW)

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

FDA's regulations in 21 CFR part 110 describe the methods, equipment, facilities, and controls for producing processed food, hereafter referred to as food CGMPs. As the minimum sanitary and processing requirements for producing safe and wholesome food, CGMPs are an important part of regulatory control of the nation's food supply. FDA believes that it is necessary to revisit and modernize the food CGMPs. Since the food CGMPs were last revised in 1986, there have been significant changes in food production technology and important advances in the understanding of foodborne illnesses. Accordingly, the agency will rigorously assess the impacts of any modernization policies on food facilities. To assess the impacts of the modernization policy, information is needed to help understand baseline or current industry practice. At present, however, FDA lacks baseline information on the nature of current manufacturing practices that would serve as part of a regulatory impact analysis.

FDA plans to conduct an Internet survey of all domestic FDA-registered facilities that primarily manufacture or process food and all foreign FDA-registered facilities that primarily manufacture or process food, which are located in those countries that are the largest food exporters to the United States: Japan, Canada, China, France, Italy, and Mexico. The Internet survey may be supplemented by extended case study interviews with selected respondents from the survey. The survey and extended case studies will solicit detailed information about six key topics relevant to the food CGMPs modernization effort: employee training, sanitation and personal hygiene, allergen controls, process controls, post-production processing, and recordkeeping. Additionally, FDA will collect information on establishment characteristics, such as facility size and industry, which are expected to correlate with the presence or absence of various manufacturing practices, such as electronic recordkeeping, ongoing employee training in food safety, and product-to-label conformance procedures. The case study interviews, if conducted, will provide qualitative, in-depth information about various factors that influence decisions to implement these types of manufacturing practices, as well as about the circumstances that underlie the cost and effectiveness of such programs. The survey will be sent to every FDA-registered facility in the United States, Japan, Canada, China, France, Italy, and Mexico that primarily manufactures or processes food products and that included an e-mail address with its registration. Participation will be voluntary and the respondent identifiers that would permit an association of specific responses to specific respondents will not be accessible to FDA.

The proposed Internet survey will collect the information from respondents electronically. With a custom-designed online survey system, responses will be entered directly into a computer database, eliminating the need for additional coding and data entry operations. Also, the system will ensure that conditional questions are asked in proper order, freeing the respondent from the need to keep track of the question order and skip patterns. The data quality will also be higher because the instrument will contain built-in edits, prompts, and data validation features.

The Internet survey method was selected due to the following considerations: (1) E-mail addresses of the respondents are available from the FDA Food Facility Registration database and are continuously validated by FDA, (2) the Internet survey method is the least costly to the agency when compared with other modes of collection and generates the timeliest responses, (3) the Internet survey will impose a relatively modest reporting burden on small entities, and (4) the Internet survey method is the only feasible method by which FDA may survey foreign facilities that export food products to the United States.

The Internet survey includes a pledge of confidentiality regarding the contractor's use of the data provided by the respondents. All data will be collected and compiled by Eastern Research Group, Inc. (ERG), an independent consulting firm contracted by FDA. ERG will provide FDA personnel only with a summary of data (aggregated statistical data) compiled in the course of the study. No reports will have information about individual facility participation or lack of participation, or information that enables FDA to determine individual responses. In keeping with longstanding FDA practice, ERG will not provide FDA with identifiers that would permit the association of specific responses with a given respondent. Responses will not be the property of the Federal government. The raw data generated by the Internet survey will not be owned by FDA, will not be an FDA record, and will not be provided, or otherwise made available, to FDA.

The key information to be collected includes responses to questions about the following: (1) Training procedures and practices for food production managers, production supervisors, quality control personnel, sanitation

and cleaning supervisors, and production line employees on the topics of food safety, basic cleaning, sanitizing, sanitation, personal hygiene, specific product and equipment training, and allergen control; (2) pest control and sanitation procedures and practices for food contact surfaces, non-food contact surfaces, production areas, and warehouses; (3) allergen control procedures and practices for soybean or soybean-based ingredients, peanuts or peanut-based ingredients, finfish and crustacea, tree nuts, milk and other diary products, eggs, and wheat or wheat-based products; (4) process controls, including written procedures for handling incoming raw materials, approving vendors, the calibration of operating equipment, pathogen control, and a Hazard Analysis and Critical Control Point system; (5) recordkeeping practices; (6) the primary operation characteristics conducted at the facility, such as the type of food manufactured or processed for human consumption; and (7) fresh produce and ready to eat packing practice and post harvest operations.

In the **Federal Register** of September 14, 2005 (70 FR 54390), FDA published a 60-day notice requesting public comment on the information collection provisions. We received comments from three respondents on the 60-day notice regarding the collection entitled ''FDA Survey of Current Manufacturing Practices in the Food Industry.'' One of the respondents' comments was received after the 60-day comment period closed and is not addressed.

Respondents were asked to submit comments pertaining to 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. Comments outside the scope of these four questions are not addressed in this notice.

(Comment 1) One industry respondent wanted assurances from FDA that individual company information was not subject to release under the Freedom of Information Act (FOIA).

(Response 1) The Internet survey includes a pledge of confidentiality regarding the data provided by the respondent. All data will be collected, compiled, and owned by ERG, an independent consulting firm contracted by FDA. ERG is contractually obligated to retain the raw data and to not provide FDA with access to it. ERG will provide FDA personnel only with anonymous summary and aggregate statistical data compiled during the course of the study; ERG is contractually restricted from providing FDA with raw or other data that has identifiers that would permit the association of specific responses to a given respondent. Data that FDA does not own cannot be requested through the FOIA.

(Comment 2) The respondent requests that only one contact be made for each individual firm through the parent company contact listed on the firm's facility registration form and not to each location where the firm has a production facility.

(Response 2) We recognize the additional burden this places on a firm but because we need current information from each manufacturing plant we do not believe that we have an alternative approach. Not every facility processes the same types of foods with the same preventive controls even when the parent company is the same. We need to get an idea of CGMPs at each facility location. Having a parent company respond could give us inaccurate information.

(Comment 3) The respondent requests that each firm (facility) receive only one solicitation for information.

(Response 3) Response to this survey is voluntary. For the sake of statistical reliability, we must contact non-responders more than just initially or our survey data result could be subject to a non-response bias. Non-response bias is affected by both the proportion of non-responders and the extent to which non-respondents and respondents differ on key questions being measured in the survey. To reduce the bias, it is necessary to reduce the number of non-responders by contacting them multiple times. It also helps to obtain information about non-responders to assess whether their socio-demographic characteristics differ systematically from survey responders. Survey researchers should always try to follow up with individuals who do not consent to participate in a survey and ascertain their reasons for non-response. We do recognize that there should be an upper limit for the number of times a non-responder should be contacted before being dropped. From our experience, data quality will not be improved significantly by more than six contacts, so we will set our upper limit at six contacts.

(Comment 4) One respondent opposes investigating foreign manufacturers.

(Response 4) We are not investigating foreign manufacturers; we are surveying them to get an idea about their manufacturing practices. Nearly 20 percent of all imports into the United States are food and food products; imported fresh produce and seafood make up a large percentage of these imports. All food, including imported and domestic food, must follow the same manufacturing regulations, thus information on foreign manufacturing processes is necessary and relevant to help inform us about how to modernize our regulation on CGMPs for food facilities.

At the time of the 60-day notice, approximately 45,000 domestic and 55,000 foreign facilities were registered with FDA. Now approximately 126,000 domestic and 81,000 facilities from Japan, Canada, China, France, Italy, and Mexico are registered with FDA.

Recent experience with online surveys has shown that fewer respondents respond than estimated at the time of the 60-day notice. Estimates of public burden have been adjusted to account for the increase in respondents and our estimate of the decrease in response rate.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Domestic Facilities					
Screening questions only	17,000	1	17,000	.067	1,139

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Completed survey	44,500	1	44,500	.75	33,375
Total domestic	61,500		61,500		34,514
Foreign Facilities					
Screening questions only	14,000	1	14,000	.067	938
Completed survey	26,000	1	26,000	.75	19,500
Total foreign	40,000	1	40,000		20,438
Grand total	101,500				54,952

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

These estimates of the number of respondents and the burden hours per response are based on FDA's registration database and FDA and the contractor's experience with previous surveys. The respondents are divided into two groups: Domestic and foreign. We estimate the number of domestic facilities at 126,000 based on information in the registration database. However, we do not expect that all of these firms will participate in the survey. We anticipate that approximately 61,500 facilities will participate, which takes into account typical response rates to these types of surveys and inaccurate contact information that facilities have entered into the registration database (see *http://www.cfsan.fda.gov/~furls/ffregacc.html*). Similarly, among the 81,000 foreign facilities in the registration database, we expect that 40,000 foreign facilities will respond.

We estimate that it will take a respondent 4 minutes (.067 hours) to complete the screening questions and 45 minutes (0.75 hours) to complete the entire survey. Prior to the administration of the survey, the agency plans to conduct a pretest of the final survey to identify and resolve potential problems. The pretest will be conducted with nine participants.

Dated: May 2, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–8783 Filed 5–7–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0363]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Absorbable Hemostatic Device; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 7, 2007, the comment period for a draft guidance entitled ''Class II Special Controls Guidance Document: Absorbable Hemostatic Device.'' FDA published a notice of availability of the draft guidance in the **Federal Register** of October 31, 2006 (71 FR 63774). The draft guidance describes a means by which the absorbable hemostatic device may comply with the requirement of special controls for class II devices, if the device is reclassified. Elsewhere in this issue of the **Federal Register**, FDA is reopening the comment period on a proposed rule to reclassify the absorbable hemostatic device from class III (premarket approval) into class II (special controls)

DATES: Submit written or electronic comments on the draft guidance by June 7, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Class II Special Controls Guidance Document: Absorbable Hemostatic Device'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this 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 *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 31, 2006 (71 FR 63728), FDA published a proposed rule to reclassify the absorbable hemostatic device intended to produce hemostasis from class III (premarket approval) into class II (special controls). In the same issue of the **Federal Register** (71 FR 63774), FDA published a notice of availability of a draft guidance document entitled ''Class II Special Controls Guidance Document: Absorbable Hemostatic Device.'' The draft guidance describes a means by which the absorbable hemostatic device may comply with the requirement of special controls if they were reclassified. FDA invited interested persons to comment on the proposed

rule and on the draft guidance document by January 29, 2007.

Two companies requested FDA to extend the comment period on the proposed rule by 90 days because the proposal presented complex medical and scientific issues that required the company to assemble a team of many different specialties in order to prepare their comments. Elsewhere in this issue of the **Federal Register**, FDA is reopening the comment period on the proposed rule for 30 days. Because the issues presented by the guidance document are intertwined with those presented by the proposed rule, FDA is reopening the comment period on the guidance document for the same period.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive the draft guidance document entitled ''Class II Special Controls Document: Absorbable Hemostatic Device,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document, or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1558 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved submissions, approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets.*

III. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–8780 Filed 5–7–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0027]

Voluntary Self-Inspection of Medicated Feed Manufacturing Facilities; Draft Compliance Policy Guide; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to June 8, 2007, the comment period for the notice of availability that appeared in the **Federal Register** of February 12, 2007 (72 FR 6572). In the notice, FDA requested comments on the draft compliance policy guide on voluntary self-inspection of medicated feed manufacturing facilities. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit written and electronic comments by June 8, 2007.

ADDRESSES: Submit written comments on the draft compliance policy guide 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 documents.

FOR FURTHER INFORMATION CONTACT: Paul Bachman, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9225, e-mail: *Paul.Bachman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 12, 2007 (72 FR 6572), FDA published a notice of availability with a 75-day comment period to request comments on a draft compliance policy guide (CPG) on voluntary self inspection of medicated feed manufacturing facilities. The purpose of this CPG is intended to provide guidance to FDA field offices on considering, among other factors, the conduct of self-inspections when prioritizing inspections of medicated feed manufacturing facilities for compliance with Current Good Manufacturing Practices for Medicated Feeds regulations.

The agency has received a request for an extension of the comment period for the draft compliance policy guide. This request conveyed concern that the current 75-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the compliance policy guide.

FDA has considered the request and is reopening the comment period for the draft compliance policy guide until June 8, 2007. The agency believes this reopening allows adequate time for interested persons to submit comments.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on these documents. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2007.

David Horowitz,

Assistant Commissioner for Regulatory Affairs.

[FR Doc. E7–8781 Filed 5–7–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review—Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms (OMB No. 0915–0126)—Extension

The National Practitioner Data Bank (NPDB) was established through Title IV of Public Law (Pub. L.) 99–660, the *Health Care Quality Improvement Act of 1986,* as amended. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for NPDB implementation and operation resides in the Bureau of Health Professions, Health Resources and Services Administration, Department of Health and Human Services. The NPDB began operation on September 1, 1990.

The intent of Title IV of Pub. L. 99–660 is to improve the quality of health care by encouraging hospitals, State licensing boards, professional societies, and other entities providing health care services, to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State-to-State without disclosure of the practitioner's previous damaging or incompetent performance.

The NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from, and disseminated to, eligible entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

The reporting forms and the request for information forms (query forms) are accessed, completed, and submitted to the NPDB electronically through the NPDB Web site at *http://www.npdb-hipdb.hrsa.gov.* All reporting and querying is performed through this secure Web site. Due to overlap in requirements for the Healthcare Integrity and Protection Data Bank (HIPDB), some of the NPDB's burden has been subsumed under the HIPDB.

Estimates of annualized burden are as follows:

Regulation citation	No. of respondents	Frequency of responses	Hours per response (minutes)	Total burden hours
60.6(a) Errors & Omissions	315	4	15	315
60.6(b) Revisions to Actions	109	1	30	54.5
60.7(b) Medical Malpractice Payment Reports	519	29	45	11,288.25
60.8(b) Adverse Action Reports—State Boards	0	0	0	
60.9(a)3 Adverse Action Reports—Clinical Privileges & Professional Society	480	2	45	720
Requests for Hearings by Entities	0	0	480	0
60.10(a)(1) Queries by Hospital—Practitioner Applications	0	0	0	0
60.10(a)(2) Queries by Hospitals—2 Year Cycle	5,996	213	5	106,429
60.11(a)(1) Disclosure to Hospitals	0	0	0	0
60.11(a)(2) Disclosure to Practitioners (Self-Query)	0	0	0	0
60.11(a)(3) Disclosure to Licensure Boards	87	645	5	4,676.25
60.11(a)(4) Queries by Non-Hospital Health Care Entities	7,305	322	5	196,017.5
60.11(a)(5) Queries by Plaintiffs' Attorneys	5	1	30	2.5
60.11(a)(6) Queries by Non-Hospital Health Care Entities-Peer Review	0	0	0	0
60.11(a)(7) Requests by Researchers for Aggregate Data	20	1	30	10
60.14(b) Practitioner Places a Report in Disputed Status	404	1	15	101
60.14(b) Practitioner Statement	1,415	1	45	1,061.25
60.14(b) Practitioner Requests for Secretarial Review	27	1	480	216
60.3 Entity Registration—Initial	1,447	1	60	1,447
60.3 Entity Registration—Update	13,115	1	5	1,092.92
60.11(a) Authorized Agent Designation—Initial	717	1	15	179.25
60.11(a) Authorized Agent—Update	139	1	5	11.58
60.12(c) Account Discrepancy Report	5	1	15	1.25
60.12(c) Electronic Funds Transfer Authorization	284	1	15	71
60.3 Entity Reactivation	0	1		
Total Burden Hours				323,694.25

Numbers in the table may not add up exactly due to rounding.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 2, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–8796 Filed 5–7–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office at (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Stem Cell Therapeutic Outcomes Database—(New)

The Stem Cell Therapeutic and Research Act of 2005 establishes the C.W. Bill Young Cell Transplantation Program and provides for the collection and maintenance of human blood stem cells for the treatment of patients and for research. The Health Resources and Services Administration's (HRSA), Healthcare Systems Bureau (HSB), is establishing the Stem Cell Therapeutic Outcomes Database as one component of the C.W. Bill Young Cell Transplantation Program. Operation of this database necessitates certain reporting requirements in order to perform the functions related to hematopoietic stem cell transplantation under contract to HHS. The Act requires the Secretary to contract for the collection and maintenance of information related to patients who have received stem cell therapeutic products and to do so using a standardized, electronic format. Data will be collected from transplant centers in a manner similar to the data collection activities historically conducted by the Medical College of Wisconsin's Center for International Blood and Marrow Transplant Research (CIBMTR) and will be used for ongoing analysis of transplant outcomes. HRSA will use the information in order to carry out its statutory responsibilities. Information is needed to monitor the clinical status of transplantation, and to provide the Secretary with an annual report of transplant center-specific survival data.

The estimate of burden is as follows:

Form	Estimated number of respondents	Responses per respondent	Total Responses	Hours per response	Total burden hours
Baseline Pre-TED (Transplant Essential Data)	225	32	7,200	0.85	6,120
Product Form (includes Infusion, HLA, and Infectious Disease Marker inserts)	225	14	3,150	1.5	4,725
100-Day Post-TED	225	32	7,200	0.85	6,120
6-Month Post-TED	225	23	5,175	1.00	5,175
12-Month Post-TED	225	20	4,500	1.00	4,500
Annual Post-TED	225	16	3,600	1.50	5,400
Total	225		30,825		32,040

The Pre-TED, Product Form, 100-Day Post-TED, 6-Month Post-TED, and 12-Month Post-TED will be collected on all patients during their first year of transplant. In subsequent years, patient outcomes will be reported on the Annual Post-TED form. There will be a gradual increase in the cumulative reporting burden over time commensurate with the number of survivors for which transplant centers must submit an Annual Post-TED.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 2, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–8799 Filed 5–7–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of a Change to the Awarding Factors Under the Fiscal Year 2007 New Access Points in High Poverty Counties (HRSA–07–069) Grant Opportunity

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Revision to awarding factors.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing a change to the awarding factors under the HRSA–07–069 ''New Access Points in High Poverty Counties'' funding opportunity [issued on Grants.gov March 14, 2007] as they relate to awards made under the HRSA–07–067 ''New Access Points'' funding opportunity for the President's first Health Centers Initiative [issued on Grants.gov October 6, 2006].

In making award decisions for fiscal year (FY) 2007, HRSA will now consider granting the same organization a new access point award under HRSA–07–067 and HRSA–07–069. HRSA will consider more than one FY 2007 new access point award to an organization if, and only if each application submitted (by the same organization for the two different funding opportunities) proposes a separate and distinct project to serve different counties. That is, there must be no overlap or duplication of service area, target population, or sites. (Under previous HRSA policy, if an organization receives a grant award in FY 2007 under the first opportunity, HRSA–07–067, it could not be awarded funds in FY 2007 under HRSA–07–069). Applicants for HRSA–07–069 should also be aware that each new access point application must be complete and must be able to stand alone.

The changes announced in this **Federal Register** Notice do not impact any HRSA policy for eligibility under the HRSA–07–069. Organizations continue to be eligible to submit one application under HRSA–07–069, irrespective of whether they applied under HRSA–07–067 or not. Additionally, all other awarding factors detailed in HRSA–07–069 remain the same.

Reference: HRSA–07–069 is available online via the HRSA Web site at: *http://www.hrsa.gov/grants/technicalassistance/pi2nap.htm* or *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: Preeti Kanodia, Division of Policy and Development, Bureau of Primary Health Care, Health Resources and Services Administration. Ms. Kanodia may be contacted by e-mail at *DPDGeneral@hrsa.gov* or via telephone at (301) 594–4300.

Dated: May 2, 2007.

Dennis P. Williams,

Deputy Administrator.

[FR Doc. E7–8712 Filed 5–7–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Office of Operations Coordination; Homeland Security Information Network Advisory Council

AGENCY: Office of Operations Coordination, DHS.

ACTION: Committee Management; Request for Applicants for Appointment to the Homeland Security Information Network Advisory Council.

SUMMARY: The Office of Operations Coordination at the Department of Homeland Security is requesting individuals who are interested in serving on the Homeland Security Information Network Advisory Council (HSINAC) to apply for appointment. The HSINAC provides advice and makes recommendations to the leadership of the Department of Homeland Security, particularly the Director, Office of Operations Coordination, on the requirements of end users within State, Local, Federal and Tribal governments and the Private Sector regarding the Homeland Security Information Network (HSIN).

DATES: Applications for membership should reach the Department of Homeland Security at the address below on or before June 22, 2007.

ADDRESSES: If you wish to apply for membership, your application should be submitted by:

- E-mail: *hsinac.comments@dhs.gov.*
- Fax: 202–282–8191.

FOR FURTHER INFORMATION CONTACT: David Castillo, 202–282–9580.

SUPPLEMENTARY INFORMATION: The Homeland Security Information Network Advisory Committee is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. (Pub. L. 92–463).

HSINAC membership shall include not more than 20 representatives from State, Tribal and Local governments and the Private Sector, who are outstanding within their specialty field, and who have the experience to ensure the Director, and DHS leadership, is informed of the needs and requirements of the information network users and communities of users. Members will be drawn from currently serving Homeland Security Advisors; State, Tribal, or Local Law Enforcement; Federal Law Enforcement; the Fire Service; Public Health; Emergency Managers; and, the Private Sector.

The committee will convene no more than twice per year. Travel and per diem will be provided by the Department. Term length shall generally be 3 years. The initial members of the HSINAC shall be appointed to terms of office of 2, 3, and 4 years in order to promote continuity and an orderly turnover of committee membership.

A security clearance is preferred, but is not a requirement for appointment to the committee. Those applicants who do not have a security clearance may be required to undergo a background investigation.

HSINAC members will be appointed as Special Government Employees (SGEs) as such term is defined for purposes of 18 U.S.C. 202(a). Appointments will be made by the Department of Homeland Security Secretary who will receive recommendations from the Office of Operations Coordination Director.

As candidates for appointment as SGEs, applicants are required to complete Confidential Financial Disclosure Reports (OGE Form 450). DHS may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*http://www.oge.gov*), or by contacting David Castillo at the number listed above. Applications which are not accompanied by a completed OGE Form 450 will not be considered.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, qualified women and minorities are encouraged to apply for membership.

Dated: April 30, 2007.

Roger Rufe, Jr.,

Director, Office of Operations Coordination, U.S. Department of Homeland Security.

[FR Doc. E7–8739 Filed 5–7–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective April 27, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided under duress to a terrorist organization as described in subsection 212(a)(3)(B)(vi)(I) or subsection 212(a)(3)(B)(vi)(II) if warranted by the totality of the circumstances.

This exercise of authority as a matter of discretion shall apply to an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States. Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

When determining whether the material support was provided under duress, the following factors, among others, may be considered: whether the applicant reasonably could have avoided, or took steps to avoid, providing material support, the severity and type of harm inflicted or threatened, to whom the harm was directed, and, in cases of threats alone, the perceived imminence of the harm threatened and the perceived likelihood that the harm would be inflicted.

When considering the totality of the circumstances, factors to be considered, in addition to the duress-related factors stated above, may include, among others: the amount, type and frequency of material support provided, the nature of the activities committed by the terrorist organization, the alien's awareness of those activities, the length of time since material support was provided, the alien's conduct since that time, and any other relevant factor.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply

to any subsequent benefit or protection application, unless it has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person. This exercise of authority does not affect the continued applicability of any other security-related ground of inadmissibility in section 212 of the Act, including subsections 212(a)(3)(B)(iv)(I) through (V), which continue to render inadmissible those who have engaged in terrorist activity as enumerated by those subsections.

In accordance with Section 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular aliens described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: April 27, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–8751 Filed 5–7–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–27857]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: For seven fiscal years starting in 1999, the Transportation Equity Act for the 21st Century has made $5 million available to the Secretary of Homeland Security for payment of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. In 2005, the law was amended and the amount was increased to $5.5 million. This notice is being published to satisfy a requirement of the Act that a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. In this notice we have specified the amount of monies the Coast Guard has committed, obligated or expended during fiscal year 2006, as of September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, Regulations Development Manager, telephone 202–372–1062, fax 202–372–1932.

Background and Purpose: The Transportation Equity Act for the 21st Century became law on June 9, 1998 (Pub. L. 105–178; 112 Stat. 107). The Act required that of the $5 million made available to carry out the national recreational boating safety program each year, $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels. On September 29, 2005, the Sportfishing and Recreational Boating Safety Amendments Act of 2005 was enacted (Pub. L. 109–74; 119 Stat. 2030). This Act increased the funds available to the national recreational boating safety program from $5 million to $5.5 million annually, and stated that ''not less than'' $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels.

The responsibility to administer these funds was delegated to the Commandant of the United States Coast Guard. Subsection (c) of section 7405 of the Act directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year from 1999 through 2006 shall remain available until expended.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total amount of funding, transferred to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund, committed, obligated, and/or expended during fiscal year 2006 for each activity is shown below.

Factory Visit Program: Funding was provided to continue the national recreational boat factory visit program, initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit 2,000 recreational boat manufacturers each year to inspect for compliance with federal regulations, communicate with the manufacturers as to why they need to comply with federal regulations, and educate them, as necessary, on how to comply with federal regulations. ($2,105,905)

Boat Compliance Testing: Funding was provided for expansion of the boat compliance testing program whereby new manually propelled and outboard recreational boats are purchased in the open market and tested for compliance with the Federal flotation standards. The expanded program includes inboard/sterndrive boats and used boats. ($100,000)

Associated Equipment Compliance Testing: A contract was awarded to buy recreational boat ''associated equipment'' (*e.g.*, starters, alternators, fuel pumps, and bilge pumps) and test this equipment for compliance with federal safety regulations. This new initiative complements the boat compliance testing program. ($150,000)

New Recreational Boating Safety Associated Travel: Travel by employees of the Office of Boating Safety was performed to carry out additional recreational boating safety actions and to gather background and planning information for new recreational boating safety initiatives. ($17,457)

Carbon Monoxide Research: Under a Memorandum of Agreement between the Office of Boating Safety and the Department of Health and Human Services, U.S. Public Health Service, Federal Occupational Health Program, funding was provided to continue investigation into identifying and classifying additional recreational boating carbon monoxide hazards. ($150,000)

Boating Accident News Clipping Service: A contract was awarded to gather daily news stories of recreational boating accidents nationally for more real time accident information and to identify accidents that may involve regulatory non-compliances or safety defects. ($37,896)

Accident Investigation Tiger Team: A contract was awarded to provide on-call expert accident investigative services for any boating accident that appeared to

involve a regulatory non-compliance or safety defect. ($56,575)

Web-based Document Management System: A contract was awarded to provide web-based document management to better enable the handling of thousands of recreational boating recall cases and campaign reports. ($65,217)

Safety Decals: Emergency Radio Call Procedures Decal used to promote proper emergency radio procedures for recreational vessels were produced and distributed. These are designed to be displayed immediately adjacent to the vessel's VHF–FM marine radio and assist vessel operators in properly making emergency radio calls. ($25,810)

Low Power Radio Transmitter System: The project funded a low power travelers information radio transmitter system in the 13th Coast Guard District for continual transmission of Bar conditions and restrictions as well as boating safety information to the boating public. ($28,471)

Recreational Boating Safety (RBS) Outreach Program: Funding was provided for this program which provides full marketing, media, public information, and program strategy support to the nation-wide RBS effort. The goal is to coordinate the RBS outreach initiatives and campaigns some of which include: National Boating Under the Influence Campaign (BUI), ''You're in Command. Boat Responsibly!'', PFD Wear, Vessel Safety Check Program (VSC), Boating Safety Education Courses, Propeller Strike Avoidance, Carbon Monoxide Poisoning, and other recreational boating safety issues on an as needed basis. ($1,032,258)

Virtual Reality Personal Watercraft (PWC): A virtual reality PWC was developed under contract to provide a platform to gather objective data on operator reactions to various scenarios. This information would otherwise be unobtainable or would require more costly methods and sources, due to the risk of injury to the operator as well as due to the difficulty of accurately replicating conditions for all operators. The virtual reality PWC is being used in various test scenarios to collect human factors data including the measurement of reactive movements and reaction time that will assist in making decisions or taking action to improve personal watercraft safety. The data from this effort will give greater insight into the human-machine interface related to PWC operation and will assist in the effort to attempt to reduce PWC accidents. ($50,000)

Boating Accident Report Database (BARD) Web System: BARD Web System funding enables reporting authorities in the 50 States, five U.S. Territories and the District of Columbia to manage their accident reports electronically over a secure Internet environment. The system also enables the user community to generate statistical reports that show the frequency, nature, and severity of boating accidents. FY 06 funds supported system maintenance, technical (hotline) support and formal classroom instruction for the entire user community. ($438,781)

Personnel Support: Funding was provided for personnel to support the development of new regulations, to support new contracting activities associated with the additional funding, and to monitor and manage the contracts awarded. ($573,188)

Propeller Injury Avoidance Working Group: Travel expenses were reimbursed for subject-matter experts to convene as a working group to explore ways that injuries associated with propeller strikes could be minimized. ($12,505)

National Recreational Boating Safety Program Strategic Planning: Meetings were conducted to continue strategic planning for the national recreational boating safety program. Funds were expended on meeting space, supplies, and travel expenses for members of the strategic planning panel. ($95,172)

National Recreational Boating Survey: A national recreational boating survey was conducted to obtain up-to-date statistical estimates on recreational boating. Over 25,000 surveys were completed with individuals who boated between September 2001 and September 2002. Survey findings were extrapolated to produce national, regional and State estimates of boat use as well as the characteristics of boat operators, passengers, boats, safety equipment, and the boating environment. ($118,056)

A total of $26,365,949 of the $35,000,000 made available to the Coast Guard through annual transfers of $5 million in fiscal years 1999, 2000, 2001, 2002, 2003, 2004 and 2005 has been committed, obligated or expended as of September 30, 2005. Of the $5.5 million made available to the Coast Guard in fiscal year 2006, $2,711,375 has been committed, obligated or expended and an additional $2,345,916 of prior fiscal year funds has been committed, obligated or expended, as of September 30, 2006. Therefore, a total of $31,423,240 of the $40,500,000 made available to the Coast Guard through annual transfers of $5 million in fiscal years 1999, 2000, 2001, 2002, 2003, 2004, 2005 and $5.5 million in 2006 has been committed, obligated or expended as of September 30, 2006. Of the remaining funds that have not been committed, obligated or expended, $8.1 million is being reserved for a multi-year national boating study.

Dated: April 24, 2007.

F.J. Sturm,

Captain, U.S. Coast Guard, Acting Director of Inspections and Compliance.

[FR Doc. E7–8738 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning temporary housing units for disaster victims of federally declared disasters.

SUPPLEMENTARY INFORMATION: Public Law 93–288, as amended by Public Law 100–707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, section 408, authorizes FEMA to provide Temporary Housing Assistance. This type of assistance could be in form of mobile homes, travel trailers, or other readily fabricated dwellings. This assistance is used when required to provide disaster housing for victims of federally declared disasters. Accordingly the FEMA Form 90–1 is designed to ensure sites for temporary housing units that will accommodate the home and comply with local, State and Federal regulations regarding the placement of the temporary housing unit; FEMA Form 90–31, ensures that the landowner (if other than the recipient of the housing unit) will allow the temporary housing unit to be placed on the property; and ensure that routes on the ingress and egress to and from the property are maintained.

Collection of Information

Title: Request for Site Inspection; Landowners Authorization/Ingress-Egress Agreement.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0030.

Form Numbers: FEMA Form 90–1 (Request for Site Inspection) and FEMA Form 90–31 Landowners Authorization/Ingress-Egress Agreement.

Abstract: FEMA's Temporary Housing Assistance is used to provide mobile homes, travel trailers, or other forms of readily fabricated forms of housing for the purpose of providing temporary housing to eligible applicants or victims of federally declared disasters. This information is required to determine the feasibility of the site for installation of the housing unit and ensured written permission of the property owner is obtained to allow the housing unit on the property to include ingress and egress permission.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 38,868.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, worksheet, etc.)	No. of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
	(A)	(B)	(C)	(D) = (A×B)	(E) = (C×D)
90–1	117,071	1	0.166 or (10 min)	117,071	19,434
90–31	117,071	1	0.166 or (10 min)	117,071	19,434
Total	234,142			234,142	38,868

Estimated Cost: $107,664.36.

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 must be submitted on or before July 9, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Anthony Johnson, Program Specialist, Disaster Assistance Directorate, telephone number (202) 314–5536 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: April 27, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–8749 Filed 5–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1693–DR]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1693–DR), dated April 25, 2007, and related determinations.

DATES: *Effective Date:* April 25, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 25, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from severe storms and inland and coastal flooding beginning on April 15, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert L. Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

Androscoggin, Cumberland, Kennebec, Knox, Oxford, and York Counties for Public Assistance.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8740 Filed 5–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1693–DR]

Maine; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–1693–DR), dated April 25, 2007, and related determinations.

DATES: *Effective Date:* April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 25, 2007:

Franklin, Hancock, Lincoln, Sagadahoc, Somerset, and Waldo Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8741 Filed 5–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1695–DR]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1695–DR), dated April 27, 2007, and related determinations.

DATES: *Effective Date:* April 27, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 27, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from severe storms and flooding beginning on April 15, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert L. Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster:

Grafton, Hillsborough, Merrimack, Rockingham, and Strafford Counties for Individual Assistance.

Belknap, Carroll, Cheshire, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties for Public Assistance.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8750 Filed 5–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1694–DR]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1694–DR), dated April 26, 2007, and related determinations.

DATES: *Effective Date:* April 26, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 26, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from severe storms and inland and coastal flooding during the period of April 14–20, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Peter J. Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared major disaster:

Bergen, Burlington, Essex, Passaic, Somerset, and Union Counties for Individual Assistance.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program).

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8744 Filed 5–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1694–DR]

New Jersey; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–1694–DR), dated April 26, 2007, and related determinations.

DATES: *Effective Date:* April 27, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 2007:

Hudson, Middlesex, and Morris Counties for Individual Assistance.

Bergen, Burlington, Essex, Passaic, Somerset, and Union Counties for Public Assistance (already designated for Individual Assistance).

Camden, Hudson, Mercer, Middlesex, and Sussex Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program).

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8746 Filed 5–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1694–DR]

New Jersey; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–1694–DR), dated April 26, 2007, and related determinations.

DATES: *Effective Date:* April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 2007:

Gloucester County for Individual Assistance. Camden and Mercer Counties for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8748 Filed 5–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1692–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1692–DR), dated April 24, 2007, and related determinations.

DATES: *Effective Date:* April 24, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 24, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms and inland and coastal flooding during the period of April 14–18, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Marianne C. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Orange, Rockland, and Westchester Counties for Individual Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–8743 Filed 5–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5123–N–11]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request, Alternative Housing Pilot Program Evaluation Baseline Survey

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 22, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L_Deitzer@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection requirement as described below. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Alternative Housing Pilot Program Evaluation Baseline Survey.

Description of Information Collection: The proposed information collection will collect baseline data from families before they received housing under FEMA's Alternative Housing Pilot Program. HUD is conducting an evaluation of AHPP. Four states affected

by Hurricanes Katrina and Rita received AHPP grants to test out alternative approaches to providing temporary housing after a disaster. HUD is charged with measuring what benefits and costs are associated with each of the alternatives being implemented by the states. Measuring the program impact on health, satisfaction, and general well-being of the occupants are a key part of the evaluation. This baseline survey is needed to know the characteristics of eligible households applying to participate in the program. This information is critical as an evaluation tool to:

(1) Document the demographic characteristics of those that apply for the program;

(2) Provide information about how the disaster affected their pre-storm housing and information on their expectations at securing permanent housing at some point; and

(3) Capture limited baseline information for comparison at a later time on impact measures of interest (such as income, source of income, perceptions of housing and neighborhood quality, and physical and mental health).

These data are also important as covariates in estimating program impacts after 2 years and 4 years of occupancy. HUD is working with states to make selection of those that actually receive a unit (from a pool of those eligible and applying) to be random. A random selection process will allow HUD to evaluate program impacts by comparing the outcomes of those offered a unit against outcomes for those not offered a unit.

OMB Control Number: To be assigned.

Agency Form Numbers: None.

Members of Affected Public: Individuals still requiring temporary housing due to Hurricanes Katrina or Rita.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: The estimated number of burden hours needed to prepare the information collection is 4,167 hours; the number of respondents is estimated as 10,000, generating approximately 10,000 annual responses; the frequency of response is once at the time of application for the AHPP program; each response is estimated to take 25 minutes.

Status: Proposed new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 1, 2007.

Lillian L. Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E7–8718 Filed 5–7–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Request for Nominations of Members To Serve on the Bureau of Indian Education Advisory Board for Exceptional Education

AGENCY: Bureau of Indian Education, Interior.

ACTION: Request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act and the Individuals with Disabilities Education Improvement Act (IDEIA), the Bureau of Indian Education requests nominations of individuals to serve on the Advisory Board for Exceptional Education (Advisory Board). The Bureau of Indian Education (BIE) will consider nominations received in response to this Request for Nominations, as well as other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides committee and membership criteria.

DATES: Nomination applications must be received on or before June 30, 2007.

ADDRESSES: Please submit nomination applications to Gloria Yepa, Supervisory Education Specialist, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, P.O. Box 1088, Albuquerque, New Mexico 87103–1088, Telephone 505–563–5264.

FOR FURTHER INFORMATION CONTACT: Gloria Yepa, Supervisory Education Specialist, at the above listed address, Telephone 505–563–5264.

SUPPLEMENTARY INFORMATION: The Advisory Board was established in accordance with the Federal Advisory Committee Act, Public Law 92–463. The following provides information about the Committee, the membership and the nomination process.

Objective and Duties

(a) Members of the Advisory Board will provide guidance, advice and recommendations with respect to special education and related services for children with disabilities in Bureau-funded schools in accordance with the requirements of IDEIA of 2004.

(b) The Advisory Board will:

(1) Provide advice and recommendations for the coordination of services within the BIE and other local, State and Federal agencies.

(2) Provide advice and recommendations on a broad range of policy issues dealing with the provision of educational services to American Indian children with disabilities.

(3) Serve as advocates for American Indian students with special education needs by providing advice and recommendations regarding best practices, effective program coordination strategies, and recommendations for improved educational programming.

(4) Provide advice and recommendations for the preparation of information required to be submitted to the Secretary of Education under section 611(h)(2)(D).

(5) Provide advice and recommend policies concerning effective inter/intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter/intra-agency programs and activities.

(6) Report and direct all correspondence to the Assistant Secretary-Indian Affairs through the Director, BIE with a courtesy copy to the Designated Federal Official (DFO).

Membership

(a) As required by IDEIA of 2004, section 611(h)(6), the Advisory Board shall be composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities. The Advisory Board composition will reflect a broad range of viewpoints and will include at least one member representing each of the following interests: Indians with disabilities, teachers of children with disabilities, Indian parents or guardians of children with disabilities, service providers, State Education Officials, Local Education Officials, State Interagency Coordinating Councils (for states having Indian reservations), tribal representatives or tribal organization representatives, and other members representing the various divisions and entities of the BIE.

(b) The Assistant Secretary—Indian Affairs may provide the Secretary of the Interior recommendations for the chairperson; however, the chairperson and other board members will be appointed by the Secretary of the Interior. Advisory Board members shall serve staggered terms of 2 years or 3 years from the date of their appointment.

Miscellaneous

(a) Members of the Advisory Board will not receive compensation, but will

be reimbursed for travel, including subsistence, and other necessary expenses incurred in the performance of their duties in the same manner as persons employed intermittently in Government Service under 5 U.S.C. 5703.

(b) A member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member's spouse or minor children, unless authorized by the DFO. Compensation from employment does not constitute a financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member's employer, other than as part of a class. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

(c) The Committee meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Assistant Secretary-Indian Affairs or DFO.

(d) All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act regulations.

Nomination Information

(a) We are seeking nominations from individuals, organizations, and federally recognized tribes, as well as from State Directors of Special Education (within the 23 states in which Bureau-funded schools are located) concerned with the education of Indian children with disabilities as described above. We will consider self-nominations as well as those submitted by a tribe or organization.

(b) Nominees should have expertise and knowledge of the issues and/or needs of American Indian children with disabilities. This knowledge and expertise are needed to provide advice and recommendations to BIE regarding the needs of American Indian children with disabilities.

(c) Each application must include a copy of the form, printed with this notice and a summary of the candidate's qualifications (résumé or curriculum vitae). Nominees must have the ability to attend Advisory Committee meetings, carry out Committee assignments, participate in teleconference calls, and work in groups.

(d) The Department of the Interior is committed to equal opportunity in the workplace and seeks diverse Committee membership. The Indian Preference Act of 1990 (25 U.S.C. 472) applies to selection of members.

Dated: April 29, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

Bureau of Indian Education Advisory Board for Exceptional Education Membership Nomination Form

Nomination Information

A. Nominations are requested from individuals, organizations, and federally recognized tribes, as well as from State Directors of Special Education (within the 23 states in which Bureau funded schools are located) concerned with the education of Indian children with disabilities as described above.

B. Nominees should have expertise and knowledge of the issues and/or needs of American Indian children with disabilities. Such knowledge and expertise are needed to provide advice and recommendations to the Bureau of Indian Education (BIE) regarding the needs of American Indian children with disabilities.

C. A summary of the candidate's qualifications (*résumé or curriculum vitae) must be included with the nomination application.* Nominees must have the ability to (1) attend Advisory Committee meetings, (2) carry out committee assignments, (3) participate in teleconference calls, and (4) work in groups.

D. The Department of the Interior is committed to equal opportunity in the workplace and seeks diverse Committee membership; however, the Department is also bound by the Indian Preference Act of 1990 (25 U.S.C. 472).

Objective and Duties

A. The Advisory Board provides guidance, advice and recommendations with respect to special education and related services for children with disabilities in BIE-funded schools in accordance with the requirements of IDEIA of 2004.

B. The Advisory Board provides advice and recommendations for the coordination of services within the BIE and with other local, State, and Federal agencies.

C. The Advisory Board provides advice and recommendations on a broad range of policy issues dealing with the provision of educational services to American Indian children with disabilities.

D. The Advisory Board serves as an advocate for American Indian students with special education needs by providing advice and recommendations regarding best practices, effective program coordination strategies, and recommendations for improved educational programming.

E. The Advisory Board provides advice and recommendations for the preparation of information required to be submitted to the Secretary of Education.

F. The Advisory Board provides advice and recommends policies concerning effective inter/intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter/intra-agency programs and activities.

G. The Advisory Board reports and directs all correspondence to the Assistant Secretary—Indian Affairs through the Director of the Bureau of Indian Education with a courtesy copy to the Designated Federal Official (DFO).

Membership

A. The Advisory Board shall be composed of 15 members. The Assistant Secretary-Indian Affairs may provide the Secretary of the Interior recommendations for the Chairperson. However all advisory board members will be appointed by the Secretary of the Interior as required. Advisory Board members shall serve staggered terms of two years or three years from the date of their appointment. The Secretary may remove members from the Advisory Board at any time at his/her discretion.

B. As required by the IDEIA of 2004, the Advisory Board will be composed of individuals involved in or concerned with the education and provision of services to Indian children with disabilities. The Advisory Board composition will reflect a broad range of viewpoints and will include at least one member representing each of the following interests: Indian persons with disabilities, teachers of children with disabilities, Indian parents or guardians of children with disabilities, service providers, State Education Officials, Local Education Officials, State Interagency Coordinating Councils (for states having Indian reservations), tribal representatives or tribal organization representatives, and BIA employees concerned with the education of children with disabilities.

C. Members of the Advisory Board will not receive compensation, but will be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties consistent with the provisions of 5 U.S.C. 5703.

D. A member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member's spouse or minor children, unless authorized by the DFO. Compensation from employment does not constitute a

financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member's employer, other than as part of a class. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

E. The Advisory Board meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Assistant Secretary or DFO.

BILLING CODE 4310–6W–P

PLEASE FILL OUT FORM COMPLETELY

Note: *You must attach a resume or curriculum vitea. Complete items 19-21 only if this information is not on your resume. Additional pages may be added for further explanation of any item. Reference the corresponding item number for which the additional explanation is made.*

1. Full Name:			
2. Mailing Address:	3. City:	4. State:	5. Zip Code:
6. Primary Contact Phone Number: ( )	7. Secondary Contact Phone Number: ( )		
8. Place of Employment:			
9. Work Address:	10. City:	11. State:	12. Zip Code:
13. Job Title:			
14. Work Telefax Number: ( )	15. E-mail address:		

16. **If appointed, this person will represent one of the following categories (check all applicable):**

_____ Indian persons with disabilities

_____ Teachers of children with disabilities

_____ Indian parents or guardians of children with disabilities

_____ Service providers

_____ State Education Officials

_____ Local Education Officials

_____ State Interagency Coordinating Councils (for states having Indian reservations)

_____ Tribal representatives or tribal organization representatives

_____ Bureau employees concerned with the education of children with disabilities

17. **What role would you recommend this nominee serve?**

_____ Advisory Board Chairperson

_____ Advisory Board Member

18. **Nominee's experience with Bureau-funded schools (check all applicable):**

_____ BIE Day School

_____ BIE Boarding School

_____ Off-Reservation Boarding School

_____ Tribal Contract School

_____ Tribal Grant School

_____ Cooperative School

19. **Provide information highlighting experiences related to the education of Indian infants, toddler, children and youth with disabilities. Include time frames of experience or employment, position titles, location of employment or organization involvement and a brief description of duties. (Attach additional pages if necessary.)**

20. **Provide a list of membership or affiliation with professional education organizations, particularly special education organizations. Identify organization offices held if applicable. (Attach additional pages if necessary.)**

21. **Identify special interests, activities, awards (professional, educational and community) related to the education of disabled Indian children (infants, toddler, children and/or youth). (Attach additional pages if necessary.)**

22. **Nominee recommended by:**

a. Name of Indian tribe, organization, or individual (include position title) making nomination:		
b. Address of Indian tribe, organization, or individual making nomination:		
c. City:	d. State:	e. Zip Code:
f. Signature of authorizing official:		
g. Date of signature:	h. Phone (Area code + Number):	i. Telefax (Area code + Number):

Note: *If you are nominating yourself, sing and date the application items 22f and g.*

Deadline

Submit nomination applications on or before June 30, 2007.

Address

Submit nomination applications to Gloria Yepa, Supervisory Education Specialist, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, P.O. Box 1088, Albuquerque, New Mexico 87103-1088.

Contact

For further information, contact Gloria Yepa, Supervisory Education Specialist, Albuquerque Service Center, Division of Performance and Accountability, at the above listed address or call (505) 563-5264.

[FR Doc. E7–8769 Filed 5–7–07; 8:45 am]
BILLING CODE 4310–6W–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PB–241A]

Extension of Approved Information Collection, OMB Control Number 1004–0041

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) plans to request the Office of Management and Budget (OMB) to extend an existing approval to collect information from permittees and lessees on the actual grazing use by their livestock. The BLM requires permittees and lessees to submit the required information on Forms 4130–1 4130–1a, 4130–1b, 4130–3a, 4130–4, and 4130–5 and, nonform information under 43 CFR subparts 4110 and 4130 for grazing use management.

DATES: You must submit your comments to BLM at the address below on or before July 9, 2007. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may send comments to the OMB, Interior Department Desk Officer (1004–0041), at OMB–OIRA via e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and *ATTN:* 1004–0041 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., *ATTN:* Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Ken Visser, on (775) 861–

6492 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Visser.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Taylor Grazing Act of 1934 (43 U.S.C. 315, 315a through 315r) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) authorize the Bureau of Land Management (BLM) to administer the livestock grazing program consistent with land use plans, multiple use objectives, sustained yield, environmental values, economic considerations, and other factors. The BLM must maintain accurate records on:

(1) Permittee and lessee qualifications for a grazing permit or lease;

(2) Base property used in conjunction with public lands; and

(3) The actual use made by livestock authorized to graze on the public lands.

The BLM also collects nonform information on grazing management from permittees and lessees.

Form 4130–1, Grazing Schedule

The BLM uses the required information this form to adjudicate conflicting requests for grazing use, determine legal qualifications of applicants, issue permits, and document transfers.

Form 4130–1a, Grazing Application—Preference Summary

The BLM uses the required information on this form to verify what the BLM needs to effectuate a grazing preference transfer.

Form 4130–1b, Grazing Application (Supplemental Information)

The BLM uses the required information on this form to certify an applicant's qualifications for a grazing permit or lease and to provide other information necessary for the administration of the grazing permit or lease.

Form 4130–3a, Automated Grazing Application

The BLM uses the required information in this form to approve changes of grazing use within the terms and conditions of permits or leases.

Form 4130–4, Exchange of Use Grazing Agreement

The BLM uses this form to exchange grazing of livestock on private lands during certain periods.

Form 4130–5, Actual Grazing Use Report

The BLM uses the required information to determine if we need to adjust the amount of grazing use or if other management actions are needed. This form enables the BLM to calculate billings and to monitor and evaluate livestock grazing use on the public lands.

Burden hours information collected	Number of actions per year	Burden hours per action	Total annual burden hours	Total annual burden cost
(a) Grazing Schedule, (Form 4130–1) and non-form information in 43 CFR 4110 and 4130	6,000	8	48,000	$3,600,000
(b) Grazing Application—Preference Summary (Form 4130–1a) and non-form information in 43 CFR 4110 and 4130	6,000	8	48,000	3,600,000
(c) Grazing Application (Supplemental Information) (Form 4130–1b) and non-form information in 43 CFR 4110 and 4130	6,000	8	48,000	3,600,000
(d) Automated Grazing Application (Form 4130–3a) and non-form information in 43 CFR 4110 and 4130	7,689	8	61,512	4,613,400
(e) Exchange of Use Grazing Agreement (Form 4130–4) and non-form information in 43 CFR 4110 and 4130	600	8	4,800	360,000
(f) Actual Grazing Use Report (Form 4130–5) and non-form information in 43 CFR 4110 and 4130	15,000	8	120,000	9,000,000
Total	41,289	.....	330,312	24,773,400

You must submit the requested information and forms to the proper BLM office. We estimate 41,289 responses per year and an annual information collection burden of 330,312 hours.

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: May 3, 2007.

Ted R. Hudson

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 07–2253 Filed 5–7–07; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–ML; GP7–0117]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S.

Department of the Interior, Bureau of Land Management Eastern Washington Resource Advisory Council will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council will meet Friday, June 1, 2007 at the Odessa Fire Station, 1 Division St., Odessa, WA, 99159.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m., adjourn at approximately 11 a.m., and will be open to the public. There will be an opportunity for public comments at 9:30 a.m. The Council will discuss proposals for development of motorized routes on public lands in the vicinity of Odessa, WA. After the meeting, the Council will visit the area where these trails are being proposed.

FOR FURTHER INFORMATION CONTACT: Scott Pavey or Sandie Gourdin, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane Valley, WA 99212–1275, or call (509) 536–1200.

Dated: May 2, 2007.

Robert B. Towne,

District Manager.

[FR Doc. E7–8754 Filed 5–7–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–1020–PH–029H; HAG 07–0114]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior, Burns District.

ACTION: Meeting Notice for the Southeast Oregon Resource Advisory Council.

SUMMARY: The next Southeast Oregon Resource Advisory Council (SEORAC) meeting is set for 8 a.m., Thursday and Friday, May 10 and 11, at the Holiday Inn Ontario, 1249 Tapadara Avenue.

Agenda items for the 2-day session include updates on transportation planning efforts for Oregon and Washington Bureau of Land Management (BLM) and U.S. Forest Service administered lands; information sharing regarding the Energy Policy Act and energy development projects on public lands in southeast Oregon; and a discussion on juniper management and review of a locally produced video regarding managing juniper in eastern Oregon. Council members will also hear updates from the Designated Federal Officials, give liaison and subgroup reports, develop agenda items for the August meeting, and spend Friday touring the Leslie Gulch area. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 1 p.m. Those who verbally address the SEORAC during the public comment period are asked to also provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

If you have information you would like distributed to SEORAC members, please send it to Tara Martinak at the Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, prior to the start of the meeting. If you send information or general correspondence to anyone at the Burns District Office and would like a copy given to the SEORAC, please write ''COPY TO SEORAC'' on the envelope and enclosed document(s).

The SEORAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon.

FOR FURTHER INFORMATION CONTACT: Tara Martinak, SEORAC Facilitator, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4519, or *Tara_Martinak@blm.gov*.

Under the Federal Advisory Committee Act management regulations (41 CFR 102–3.15(b)), in exceptional circumstances an agency may give less than 15 days notice of committee meeting notices published in the **Federal Register**. In this case, this notice is being published less than 15 days prior to the meeting due to scheduling conflicts and difficulty obtaining a secure agenda.

Dated: May 1, 2007.

Dana R. Shuford,

District Manager.

[FR Doc. E7–8778 Filed 5–7–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–07–1910–BJ–5GKV]

Notice of Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plat of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of portions of the subdivisional lines, the subdivision of section lines, and the 1928–29 adjusted meander lines of the dry bed of old lake (locally known as Lawless Lake), and the survey of the subdivision of section 30, of Township 25 North, Range 10 East, of the Sixth Principal Meridian, Nebraska.

Copies of the preceding described plat and field notes are available to the public at a cost of $1.10 per page.

Dated: May 2, 2007.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. E7–8779 Filed 5–7–07; 8:45 am]

BILLING CODE 4467–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting (conference call).

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee

(AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Dates and Addresses: The AMWG will conduct the following conference call:

Date: Tuesday, May 22, 2007. The call will begin at 12 noon (EDT), 10 a.m. (MDT) and 9 a.m. (PDT and Arizona) and conclude three (3) hours later in the respective time zones. The telephone numbers are: 1–801–524–3860 for Federal participants and 1–888–264–8816 for non-Federal participants and members of the public.

Agenda: The purpose of the meeting will be for the AMWG to receive updates and discuss the following items: (1) Roles Ad Hoc Group Report and recommendations; (2) the Beach/Habitat Building Flow Science Plan; (3) Draft Fiscal Year 2008 budget; (4) the Long-Term Experimental Plan Environmental Impact Statement; and (5) the Monitoring and Research Plan. The AMWG also will consider a motion by the TWG that recommends the Secretary of the Interior secure resources to direct the development and prompt implementation of risk assessment, education, prevention/containment, and science elements in order to limit the wide-ranging damages that may be caused by quagga mussel invasion of the Colorado River system. To view a copy of the draft agenda, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/06may22/index.html.*

Time will be allowed for any individual or organization wishing to make formal oral comments on the call. To allow for full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone 801–524–3715; facsimile 801–524–3858; e-mail at *dkubly@uc.usbr.gov* at least five (5) days prior to the call. Any written comments received will be provided to the AMWG members.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, Bureau of Reclamation, telephone (801) 524–3715; facsimile (801) 524–3858; e-mail at *dkubly@uc.usbr.gov*.

Dated: April 30, 2007.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. E7–8755 Filed 5–7–07; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–603]

In the Matter of Certain DVD Players and Recorders and Certain Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 6, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Toshiba Corporation of Japan and Toshiba America Consumer Products, L.L.C., of Wayne, New Jersey. A supplemental letter was filed on April 24, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain DVD players and recorders and certain products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,587,991, 5,870,523, and 5,956,306. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 1, 2007, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain DVD players and recorders and certain products containing same by reason of infringement of one or more of claims 6 and 7 of U.S. Patent No. 5,587,991; claims 16 and 31 of U.S. Patent No. 5,870,523; and claim 4 of U.S. Patent No. 5,956,306; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Toshiba Corporation, 1–1 Shibaura 1-Chome, Minato-Ku, Tokyo 105–8001, Japan.

Toshiba America Consumer Products, L.L.C., 82 Totowa Road, Wayne, New Jersey 07470.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Daewoo Electronics America, Inc., 120 Chubb Avenue, Lyndhurst, New Jersey 07071.

Dongguan GVG Digital Technology Ltd., Da Ping Precinct, Tang Xia Town, Dongguan, Guangdong Province, China 523722.

Dongguan Tonic Electronics Co., Ltd., Shi Tanbu Administrative Zone, Tang

Xia Town, Dongguan, Guangdong Province, China 523717.
Dongguan Xin Lian Digital Technology Co. Ltd., Huang Jia Bo Industrial Zone, Shi Pai Town, Dongguan, Guangdong Province, China 523347.
GVG Digital Technology Holdings Ltd., Rm 1822, Grandtech Centre, 8 On Ping St, Siu Lek Yuen, Shatin, New Territories, Hong Kong.
jWIN Electronics Corporation, 2 Harbor Park Drive, Port Washington, New York 11050.
Memcorp Inc., 3200 Meridian Parkway, Weston, Florida 33331.
Star Light Electronics Co. Ltd., 5/F, Shing Dao Industrial Building, 232 Aberdeen Main Road, Wanchai, Hong Kong.
Starlight International Holdings Limited, 5/F, Shing Dao Industrial Building, 232 Aberdeen Main Road, Wanchai, Hong Kong.
Starlight Marketing (HK) Ltd., 5/F, Shing Dao Industrial Building, 232 Aberdeen Main Road, Wanchai, Hong Kong.
Tonic Digital Products Limited, Unit B, 10th Floor, Summit Building, 30 Man Yue Street, Hung Hom, Kowloon, Hong Kong.
Tonic DVB Marketing Ltd., Suite 805, New Tech Plaza Tower A, Tian'An Cyber Park, Futian District, Shenzhen City, Guangdong Province, China 518040.
Tonic Electronics Limited, Unit B, 10th Floor, Summit Building, 30 Man Yue Street, Hung Hom, Kowloon, Hong Kong.
Tonic Industries Holdings Limited, Unit B, 10th Floor, Summit Building, 30 Man Yue Street, Hung Hom, Kowloon, Hong Kong.
Tonic Technology (HK) Limited, Unit B, 10th Floor, Summit Building, 30 Man Yue Street, Hung Hom, Kowloon, Hong Kong.
Tonic Technology (Shenzhen) Ltd., Suite 805, New Tech Plaza Tower A, Tian'An Cyber Park, Futian District, Shenzhen City, Guangdong Province, China 518040.
Tonic Trading Development Ltd., Unit B, 10th Floor, Summit Building, 30 Man Yue Street, Hung Hom, Kowloon, Hong Kong.

(c) The Commission investigative attorney, party to this investigation, is Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–F, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Carl C. Charneski is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 3, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8787 Filed 5–7–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–707–709 (Second Review)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, and Germany

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on certain seamless carbon and alloy steel standard, line, and pressure pipe from Argentina and Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission also determines that revocation of the antidumping duty order on certain seamless carbon and alloy steel standard, line, and pressure pipe from Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Background

The Commission instituted these reviews on June 1, 2006 (71 FR 31209) and determined on September 5, 2006 that it would conduct full reviews (71 FR 54520, September 15, 2006). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 29, 2006 (71 FR 57567). The hearing was held in Washington, DC, on February 8, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on May 2, 2007. The views of the Commission are contained in USITC Publication 3918 (May 2007), entitled Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Argentina, Brazil, and Germany.

Issued: May 3, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8786 Filed 5–7–07; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Charlotte R. Lane dissenting, Commissioner Dean A. Pinkert not participating.

[3] Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun dissenting, Commissioner Dean A. Pinkert not participating.

DEPARTMENT OF JUSTICE

[AAG/A Order No. 009–2007]

Privacy Act of 1974; System of Records

AGENCY: National Security Division, Department of Justice.

ACTION: New System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice (DOJ) proposes to establish a

new National Security Division (NSD) system of records entitled ''Foreign Intelligence and Counterintelligence Records System, JUSTICE/NSD–001.'' The new system of records incorporates three previous systems of records of the Office of Intelligence Policy and Review (OIPR): The ''Policy and Operational Records System, OIPR–001'' last published in the **Federal Register** January 26, 1984 (49 FR 3281); ''Foreign Intelligence Surveillance Act Records System, OIPR–002'' last published in the **Federal Register** January 26, 1984 (49 FR 3282); and ''Litigation Records System, OIPR–003'' last published in the **Federal Register** January 26, 1984 (49 FR 3284). These systems will be deleted on the effective date of the new system, NSD–001.

DATES: In accordance with the requirements of 5 U.S.C. 552a(e)(4) and (11), the public is given a 30 day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, has 40 days in which to conclude its review of the system. Therefore, please submit any comments by June 18, 2007.

ADDRESSES: The public, OMB and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), facsimile number 202–307–1853.

FOR FURTHER INFORMATION CONTACT: GayLa Sessoms (202) 616–5460.

SUPPLEMENTARY INFORMATION: The National Security Division (NSD) was created by section 506 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (''the Act''), by consolidating the resources of the Justice Department's three primary national security components: The Office of Intelligence Policy and Review (OIPR) and the Criminal Division's Counterterrorism and Counterespionage Sections. On March 7, 2007, the NSD published in the **Federal Register**, at 72 FR 10064, a final rule to amend title 28 of the Code of Federal Regulations (CFR) to reflect the establishment of the NSD and its mission and functions. The rule also made necessary amendments to the CFR to effect the changes necessary in the functions of the former Office of Intelligence and Policy Review and functions of the Criminal Division that are transferring to NSD.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: April 27, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE/NSD–001

SYSTEM NAME:

Foreign Intelligence and Counterintelligence Records System.

SECURITY CLASSIFICATION:

The majority of information in this system of records is classified. The remaining information is Sensitive But Unclassified.

SYSTEM LOCATION:

United States Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subject of applications for electronic surveillance, physical search, and other foreign intelligence and foreign counterintelligence investigations authorized by the Foreign Intelligence Surveillance Court (FISC) pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended, 50 U.S.C. 1801 *et seq.* (FISA), Executive Order 12333, and other applicable executive orders governing foreign intelligence; individuals about whom information was obtained by a foreign intelligence electronic surveillance or other search where issues pertaining to the surveillance or search were raised in subsequent litigation; individuals whose activities are the subject of a properly authorized foreign intelligence, foreign counterintelligence, or international terrorism investigation, or investigative techniques not requiring approval from the FISC or whose activities form the crux of a foreign intelligence or counterintelligence policy or operational question; individuals who are not the subjects or proposed subjects of particular investigations or investigative techniques, but who are identified in connection with the authorities for such investigations or techniques, because of their communications or associations with such subjects or their involvement in related activities of foreign intelligence or counterintelligence (including counterterrorism) interest; and NSD attorneys.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of FISA applications, authorizations for foreign intelligence and foreign counterintelligence operations, supporting documentation, and FISC orders or Attorney General certifications, as appropriate. This includes notes, memoranda, legal opinions, and reports acquired or produced by the National Security Division (NSD) in the course of executing its assigned functions of preparing FISA applications. Included in this system are recommendations to the Attorney General concerning Attorney General authorizations for physical searches, pursuant to Executive Order (E.O.) 12333, and electronic surveillances abroad of United States persons that are requested by entities within the Intelligence Community pursuant to FISA and other applicable executive orders governing foreign intelligence. This system also includes documents related to authority to conduct particular investigations or to use certain techniques in particular investigations. Included in this system are legal opinions regarding questions of law and policy that relate to United States intelligence activities, and supporting documentation prepared in connection with litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system was established and is maintained pursuant to 44 U.S.C. 3101, 3103, 3105 and 28 CFR 0.72, to implement the provisions of 50 U.S.C. 1801 *et seq.* as amended and the applicable executive order(s) governing foreign intelligence surveillance and classified national security information.

PURPOSE OF THE SYSTEM:

This system is maintained to enable NSD staff to prepare applications under FISA; maintain an accurate record of applications filed by the United States before the FISC; participate in the review, development, implementation and oversight of United States intelligence, counterintelligence, and national security policy matters; provide legal advice to the Attorney General and the United States intelligence agencies regarding questions of law and policy that relate to United States intelligence activities; support litigation issues pertaining to foreign intelligence collections; and, analyze, interpret, and comment upon proposed statutes, executive orders, guidelines and other directives pertaining to foreign intelligence, counterintelligence, and national security activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are routinely used by NSD staff in performing the duties ascribed to the NSD. Information may be disclosed from this system consistent

with restrictions that apply to classified information, and consistent with the FISA, as follows:

A. To any court, department, officer, agency, regulatory body or other authority of the United States, a state or a political subdivision thereof, or to any aggrieved person or representative of an aggrieved person, during the course of a trial, hearing, or other proceeding.

B. In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

C. To the Administrative Office of the United States Courts and to Congress.

D. To agencies or entities in the intelligence community that have submitted a policy or operational question to the NSD when the information is necessary in the course of providing legal advice in response to the question.

E. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

F. To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

H. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

I. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

J. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, and/or in electronic form. Records that contain classified national security information are stored in accordance with applicable executive orders, statutes, and agency implementing regulations.

RETRIEVABILITY:

Information is retrieved by the name of the actual or proposed target of the electronic surveillance or physical search, and persons in contact with the target. Information may also be retrieved by the caption of the litigation, including the names of individuals, and through the use of a subject matter index that includes the names of individuals. Information may also be retrieved by name of the NSD attorney assigned.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. Classified information is appropriately stored in safes and in accordance with other applicable requirements. Records and technical equipment are maintained in a secured area with restricted access. The required use of password protection identification features and other system protection methods also restrict access.

RETENTION AND DISPOSAL:

Records in this system are maintained and disposed of in accordance with all applicable statutory and regulatory requirements.

SYSTEM MANAGER AND ADDRESS:

Deputy Counsel for Intelligence Policy, Office of Intelligence Policy & Review, National Security Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURES:

Address any inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

A major part of this system is exempted from this requirement under subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2), and (5). A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and letter clearly marked ''Privacy Act Request.'' The request should include the full name of the individual involved, the individual's current address, date and place of birth, and his or her signature which shall be notarized or made pursuant to 28 U.S.C. 1746 as an unsworn declaration, along with any other information which may be of assistance in locating and identifying the record. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include applications to the FISC and supporting documents that include investigative reports from federal law enforcement and intelligence agencies and other executive branch departments, and agencies conducting foreign counterintelligence and terrorism investigations that are client agencies of the Department of Justice. Occasional information from state, local or foreign governments, copies of criminal, civil and appellate court documents and related material, and the work product of Department of Justice and federal

agency attorneys may also be included within this system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2), and (5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2) or (5). A determination as to exemption shall be made at the time a request for access or amendment is received.

[FR Doc. E7–8763 Filed 5–7–07; 8:45 am]

BILLING CODE 4410–AW–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 013–2007]

National Security Division; Privacy Act of 1974; System of Records

AGENCY: National Security Division, Department of Justice.

ACTION: Notice of new system of records.

SUMMARY: This system of records, formerly entitled CRM–017, ''Registration and Propaganda Files Under the Foreign Agents Registration Act of 1938, as amended,'' was last published in the **Federal Register** on May 11, 1988 (53 FR 16794). It is being revised and renamed as a new system of records under the newly created National Security Division (NSD) in the Department of Justice: JUSTICE/NSD–002,''Registration and Informational Material Files Under the Foreign Agents Registration Act of 1938.'' The Department hereby removes, on the effective date of this notice, the former notice of CRM–017.

DATES: In accordance with the requirements of 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. The Office of Management and Budget (OMB) which has oversight responsibility under the Act, has 40 days in which to conclude its review of the system. Therefore, please submit any comments by June 18, 2007.

ADDRESSES: The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), facsimile number 202–307–1853.

FOR FURTHER INFORMATION CONTACT: Heather Hunt, (202) 514–1216.

SUPPLEMENTARY INFORMATION: The National Security Division (NSD) was created by section 506 of the USA PATRIOT Improvement and Reauthorization Act of 2005, by consolidating the resources of the Justice Department's three primary national security components: The Office of Intelligence Policy and Review and the Criminal Division's Counterterrorism and Counterespionage Sections. On March 7, 2007, the NSD published in the **Federal Register**, at 72 FR 10064, a final rule to amend title 28 of the Code of Federal Regulations (CFR) to reflect the establishment of the NSD and its mission and functions. The rule also made necessary amendments to the CFR to effect the changes necessary in the functions of the former Office of Intelligence and Policy Review and functions of the Criminal Division that are transferring to NSD.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: April 27, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

JUSTICE/NSD–002

SYSTEM NAME:

Registration and Informational Material Files Under the Foreign Agents Registration Act of 1938.

SECURITY CLASSIFICATION:

Sensitive but Unclassified.

SYSTEM LOCATION:

U.S. Department of Justice; National Security Division; 950 Pennsylvania Ave., NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have registered under the Foreign Agents Registration Act of 1938, as amended, (FARA), 22 U.S.C. 611 *et seq.*, and persons referenced in correspondence or other files related to FARA.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Automated alphabetical indices which include summary data such as registrant names, file numbers, dates of registration, and a synopsis of activities performed for a given foreign principal; and (2) file folders which contain copies of all registration statements and statements concerning the distribution of informational materials furnished under FARA.

Other records related to subject matters described in this system may include related correspondence, inspection and/or investigative reports, and/or statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under FARA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 22 U.S.C. 611 *et seq.* The system is also maintained to implement the provisions of 28 CFR 0.72 and 28 CFR Part 5.

PURPOSE OF THE SYSTEM:

The system is maintained to enable the Registration Unit, Counterespionage Section, National Security Division, to implement the various provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.* The system provides for the public examination of the registration statements filed by foreign agents engaged in activities for or on behalf of foreign governments, foreign political parties, or other foreign principals. Public examination helps to insure that the U.S. Government and the people of the United States are informed of the source of information and the identity of persons attempting to influence U.S. public opinion, policy, and laws.

As prescribed by 22 U.S.C. 616(a), (b), and (c), the records in this system that are public records are open to public examination and inspection and copies of the same shall be furnished to every applicant at fees prescribed by 28 CFR 5.601. One copy of every registration statement filed under FARA and one copy of every amendment or supplement thereto filed under FARA shall be forwarded to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States.

Public information obtained under FARA, including the names of registrants, copies of registration statements, or parts thereof, copies of informational materials, or other documents or information filed under FARA, may be furnished to departments and agencies in the executive branch and committees of the Congress.

Other records related to the subject matters described in this system that are not available for public examination may be disclosed as follows.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To a Member of Congress or staff acting upon the Member's behalf when

the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

A record may be disclosed to designated officers and employees of state, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To Federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

To appropriate agencies, entities, and persons when (1) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

To any person or entity that the Registration Unit, Counterespionage Section, National Security Division has reason to believe possesses information regarding a matter within the jurisdiction of the Registration Unit, Counterespionage Section, National Security Division, to the extent deemed to be necessary by the Registration Unit, Counterespionage Section, National Security Division in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, and/or in electronic form. Records are stored in accordance with applicable executive orders, statutes, and agency implementing regulations. Paper records contained in this system are stored manually on index cards and in file jackets; selected summary data, e.g., name and address of registrant, name of foreign principal, description of activities, and amount of money received, are stored on magnetic disks.

RETRIEVABILITY:

Information and summary data is retrieved by registrant name. Summary data includes: Name and address of registrant, name of foreign principal, description of activities, amount of money received, and promotional material disseminated.

SAFEGUARDS:

Some records in this system have been designated as public records by 22 U.S.C. 616. All other records in this system are safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. Records and technical equipment are maintained in a secured area with restricted access. The required use of password protection identification features and other system protection methods also restrict access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with a schedule approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Foreign Agents Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Same as the Above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made pursuant to the provisions of 28 CFR 5.600 and 5.601.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The source of information contained in this system is the registrant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–8765 Filed 5–7–07; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 014–2007]

National Security Division; Privacy Act of 1974; System of Records

AGENCY: National Security Division, Department of Justice.

ACTION: Notice of New System of Records.

SUMMARY: This system of records, formerly designated CRM–018, ''Registration Files of Individuals Who Have Knowledge of, or Have Received Instruction or Assignment in, Espionage, Counterespionage, or Sabotage Service or Tactics of a Foreign Government or of a Foreign Political Party,'' was last published in the **Federal Register** on December 11, 1987 (52 FR 47197). It is being revised and redesignated as a new system of records with the same name, under the newly created National Security Division (NSD) in the Department of Justice, designated JUSTICE/NSD–003. The Department hereby removes, on the effective date of this notice, the former notice of CRM–018.

DATES: In accordance with the requirements of 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. The Office of Management and Budget (OMB) which has oversight responsibility under the Act, has 40 days in which to conclude its review of the system. Therefore, please submit any comments by June 18, 2007.

ADDRESSES: The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), facsimile number 202–307–1853.

FOR FURTHER INFORMATION CONTACT: Robert E. Wallace, (202) 514–1187.

SUPPLEMENTARY INFORMATION: The National Security Division (NSD) was created by section 506 of the USA PATRIOT Improvement and Reauthorization Act of 2005, by consolidating the resources of the Justice Department's three primary national security components: The Office of Intelligence Policy and Review and the Criminal Division's Counterterrorism and Counterespionage Sections. On March 7, 2007, the NSD published in the **Federal Register**, at 72 FR 10064, a final rule to amend title 28 of the Code of Federal Regulations (CFR) to reflect the establishment of the NSD and its mission and functions. The rule also made necessary amendments to the CFR to effect the changes necessary in the functions of the former Office of Intelligence and Policy Review and functions of the Criminal Division that are transferring to NSD.

In accordance with 5 U.S.C. 552a (r), the Department has provided a report to OMB and the Congress.

Dated: April 27, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

JUSTICE/NSD–003

SYSTEM NAME:

Registration Files of Individuals Who Have Knowledge of, or Have Received Instruction or Assignment in, Espionage, Counterespionage, or Sabotage Service or Tactics of a Foreign Government or of a Foreign Political Party.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Justice; National Security Division; 950 Pennsylvania Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have registered under 50 U.S.C. 851 *et seq.* as having knowledge of, or having received instruction in, espionage, counterespionage, or sabotage service or tactics of a foreign government or of a foreign political party.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the statement of the registrant and other documents required to be filed under 50 U.S.C. 851. The system is a public record except that certain statements may be withdrawn from public examination pursuant to 50 U.S.C. 853 and 28 CFR 12.40 by the Attorney General having due regard for national security and the public interest.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 50 U.S.C. 851 *et seq.* The system is also maintained to implement the provisions codified in 28 CFR part 12.

PURPOSE(S):

The system is maintained to enable the Registration Unit, Counterespionage Section, National Security Division, to implement the various provisions of Title 50, United States Code, Section 851. The system provides for the public examination of the registration statements filed by certain persons who have knowledge of or have received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As prescribed by 50 U.S.C. 853, a portion of the records in this system are public records and may be disclosed to any individual, organization, or government agency; non public records, i.e. records withdrawn by the Attorney General from public examinations may be disclosed as follows:

To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

To appropriate officials and employees of a federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

A record may be disclosed to designated officers and employees of state, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To Federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

To any person or entity that the Registration Unit, Counterespionage Section, National Security Division has reason to believe possesses information regarding a matter within the jurisdiction of the Registration Unit, Counterespionage Section, National Security Division, to the extent deemed to be necessary by the Registration Unit, Counterespionage Section, National Security Division in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper, and/or in electronic form. Records are stored in accordance with applicable executive orders, statutes, and agency implementing regulations. A record contained in this system is stored manually on index cards and in file jackets. An automated alphabetical index is maintained and stored on magnetic disks.

RETRIEVABILITY:

A record is retrieved by name of the individual registrant.

SAFEGUARDS:

Records are safeguarded and protected in accordance with applicable Departmental security procedures.

RETENTION AND DISPOSAL:

Staff is working with NARA to develop an appropriate schedule.

SYSTEMS MANAGER(S) AND ADDRESS:

Chief, Foreign Agents Registration Unit; Counterespionage Section; National Security Division; U.S. Department of Justice; 950 Pennsylvania Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made pursuant to the provisions of 28 CFR 12.40 and 12.41.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The source of information contained in this system is the registrant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–8766 Filed 5–7–07; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 4–2007]

Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration

1. *Purpose.* To delegate authorities and assign responsibilities to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301

(Departmental Regulations); 29 U.S.C. 551 (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); National Apprenticeship Act of 1937 (29 U.S.C. 50); 29 CFR Part 30.

3. *References.* Secretary's Order 10–83; Secretary's Order 14–77; and Secretary's Order 9–75.

4. *Directives Affected.* Secretary's Order 4–2001 is hereby canceled (Employment Standards). Secretary's Order 9–75 is superseded to the extent that it is inconsistent with Section 7a.(29) of this Order.

5. *Background.* This Order, which supersedes Secretary's Order 4–2001, constitutes the generic Secretary's Order for the Employment Standards Administration (ESA). Specifically, this Order delegates authorities and assigns responsibilities to the Assistant Secretary for Employment Standards and other officials in ESA.

This Order repeals paragraph 4.a. (19) of Secretary's Order 4–2001, which contained a joint delegation of authority and assignment of responsibility to the Assistant Secretary for Employment Standards and the Assistant Secretary for Employment and Training for enforcing the Equal Employment Opportunity in Apprenticeship and Training requirements.

This Order also delegates authority and assigns responsibility for carrying out the functions described in Section 211(a) of the LMRA, 29 U.S.C. 181(a), (''Compilation of Collective Bargaining Agreements, etc., Use Data'') to the Assistant Secretary for Employment Standards. Section 211(a) of the LMRA requires the maintenance of a file of copies of all available collective bargaining agreements and other available agreements and actions used in settling or adjusting labor disputes, except for specific information submitted in confidence.

6. *Delegation to the Assistant Secretary for Employment Standards.*

A. Paragraph 7.a. (29) of this Order contains the delegation of authority and the assignment of responsibility for Section 211(a) of the LMRA, 29 U.S.C. 181(a) (''Compilation of Collective Bargaining Agreements, etc., Use Data'').

B. All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration in Secretary's Order 4–2001, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

7. *Delegation of Authority and Assignment of Responsibility.*

A. *The Assistant Secretary for Employment Standards* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards, and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for the Equal Pay Act, Section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission on July 1, 1979, pursuant to the President's Reorganization Plan No. 1 of February 1978, set out in the Appendix to Title 5, Government Organization and Employees.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Assistant Secretary for Employment Standards includes subpoena authority under 41 U.S.C. 39.

(3) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health. The authority of the Assistant Secretary for Employment Standards includes subpoena authority under 41 U.S.C. 353(a).

(4) The Davis-Bacon Act, as amended, 40 U.S.C. 276a *et seq.*, and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 276c; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*

(7) The labor standards provisions contained in Sections 5(i) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(8) The Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1801 *et seq.*, including subpoena authority under 29 U.S.C. 1862(b).

(9) The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 *et seq.*, including subpoena authority under 29 U.S.C. 2004(b).

(10) The Federal Employees' Compensation Act, as amended and extended, 5 U.S.C. 8101 *et seq.*, except 5 U.S.C. 8149, as it pertains to the Employees' Compensation Appeals Board.

(11) The Longshore and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 *et seq.*, except: 33 U.S.C. 919(d), with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b), as it applies to the Benefits Review Board; and activities pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary for Occupational Safety and Health.

(12) The Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.*

(13) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, except for monitoring of the Federal contractor job listing activities under 38 U.S.C. 4212(a) and the annual Federal contractor reporting obligations under 38 U.S.C. 4212(d), delegated to the Assistant Secretary for Veterans' Employment and Training.

(14) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and Executive Order 11758 (''Delegating Authority of the President Under the Rehabilitation Act of 1973'') of January 15, 1974.

(15) Executive Order 11246 ''Equal Employment Opportunity'' (September 24, 1965), as amended by Executive Order 11375 of October 13, 1967; and Executive Order 12086 (''Consolidation of Contract Compliance Functions for Equal Employment Opportunity'') of October 5, 1978.

(16) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (INA): Section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification (H–2A) program; and Section 274A(b)(3), 8 U.S.C. 1324A(b)(3),

relating to employment eligibility verification and related recordkeeping.

(17) Section 212(m)(2)(E)(ii) through (v) of the INA, 8 U.S.C. 1182(m)(2)(E)(ii) through (v), relating to the complaint, investigation, and penalty provisions of the attestation process for users of nonimmigrant registered nurses (*i.e.*, H–1A Visas).

(18) The enforcement of the attestations required by employers under the INA pertaining to the employment of nonimmigrant longshore workers, Section 258 of the INA, 8 U.S.C. 1288(c)(4)(B)–(F); and foreign students working off-campus, 8 U.S.C. 1184 note; and enforcement of labor condition applications for employment of nonimmigrant professionals, Section 212(n)(2) of the INA, 8 U.S.C. 1182(n)(2).

(19) Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and the regulations at 41 CFR part 60–742.

(20) The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 *et seq.*, including subpoena authority under 29 U.S.C. 2616.

(21) The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Assistant Secretary for Employment Standards under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(22) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 *et seq.*

(23) Section 701 (Standards of Conduct for Labor Organizations) of the Civil Service Reform Act of 1978, 5 U.S.C. 7120; Section 1017 of the Foreign Service Act of 1980, 22 U.S.C. 4117; Section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); and the regulations pertaining to such sections at 29 CFR Parts 457–459.

(24) Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1209.

(25) The employee protection provisions of the Federal Transit law, as codified at 49 U.S.C. 5333(b), and related provisions.

(26) The employee protection provisions certified under Section 405(a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565(a), (b), (c), and (e).

(27) Executive Order 13201, (''the Notification of Employee Rights Concerning Payment of Union Dues or Fees'') of February 17, 2001.

(28) The Energy Employees Occupational Illness Compensation Program Act of 2000, Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398), and Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers'') of December 7, 2000.

(29) Section 211(a) of the Labor Management Relations Act, 1947, 29 U.S.C. 181(a) (''Compilation of Collective Bargaining Agreements, etc.; Use of Data'').

(30) Such additional Federal acts that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(29) of this paragraph, as directed by the Secretary.

B. *The Wage and Hour Administrator of the Employment Standards Administration* is hereby delegated authority and assigned responsibility to:

(1) Issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

C. *The Wage and Hour Regional Administrators of the Employment Standards Administration* are hereby delegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

D. *The Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see section 7.a. (21) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

E. *The Assistant Secretary for Administration and Management* is delegated authority and assigned responsibility to assure that any transfer of resources affecting this Order is fully consistent with the budget policies of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by this exchange of responsibilities is conducted. The Assistant Secretary for Administration and Management is also responsible for providing or assuring that appropriate

administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

F. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

8. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 2–96 (April 17, 1996).

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

9. *Redelegation of Authority.* The Assistant Secretary for Employment Standards, the Assistant Secretary for Administration and Management, and the Solicitor of Labor may redelegate authority delegated in this Order.

10. *Effective Date.* This order is effective immediately.

Dated: May 2, 2007.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. E7–8795 Filed 5–7–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Multiple Education Pathways Blueprint Grants (MEPB)

Announcement Type: Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 06–12.

Catalog of Federal Assistance Number: 17.261.

DATES: *Key Dates:* The closing date for receipt of applications under this announcement is June 7, 2007. Applications must be successfully submitted no later than 5 p.m. (Eastern Time). Application and submission information is explained in detail in Part IV of this SGA.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of approximately $3 million in grant funds to create a blueprint to build systems of multiple education pathways.

Grants will be awarded through a competitive process and will support small cities (population 70,000–350,000) in the development of a multiple education pathway blueprint which will serve as the city's plan to support youth who are at risk of dropping out of school and youth who have already dropped out of school. ETA is targeting cities of this size in order for the blueprints to have maximum impact on the community's dropout challenges. ETA will fund grants to approximately 10 cities to create blueprints for building multiple education pathways that encompass various alternative education models and strategies. These blueprints will be used to build educational ecosystems that bring together all the educational assets in a community and leverage them to support multiple education pathways that move students to post-secondary education and career pathways and integrate education strategies that may cut across multiple schools and community colleges. It is not the intent for these grants to fund programs and/or slots in educational programs but rather to be used as a catalyst to bring together community partners to assess and address the challenge of serving youth who are at risk of dropping out and youth who have dropped out of school.

These blueprints must be integrated with the city's broader education strategic plan and connected to regional talent and economic development strategies. The blueprints should identify a wide range of innovative and academically rigorous learning environments that address the needs of youth who are at risk of dropping out of school and youth who have dropped out of school. The blueprint will serve as the city's strategic plan for developing and benchmarking progress toward creating a multiple education pathway system.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting grantees.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: James Stockton, Reference SGA/DFA PY 06–12, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20201. Facsimile (fax) applications will not be accepted. Information about applying online can be found in Section IV(C) of this document. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

Applications may also be submitted via the Grants.gov application system. For detailed guidance, please refer to Section IV. C.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts:

- Part I provides background information on ETA's multiple education pathways project, a description of ETA's youth vision, and additional information on the key components to consider when preparing an application.
- Part II describes the size and nature of the anticipated awards.
- Part III describes eligibility information.
- Part IV provides information on the application and submission process.
- Part V describes the criteria against which applications will be reviewed and explains the proposal review process.
- Part VI provides award administration information.
- Part VII contains ETA agency contact information.
- Part VIII lists additional resources of interest to applicants and other information.

I. Funding Opportunity Description

These grants will support small cities (population 70,000–350,000) [1] in the development of detailed blueprints for multiple education pathways systems that provide a mix of alternative learning environments. ETA is targeting cities of this size in order for the blueprints to have maximum impact on the community's dropout challenges. It is ETA's expectation that the blueprints developed with these funds will serve as the city's strategic action plan and

[1] For population size please go to: *http://www.demographia.com/db-2000city5k.htm.*

foundation for building multiple education pathways.

Youth who are at risk of dropping out of school and youth who have already dropped out of school are the main targets of this grant; however, it is important that the blueprint developed fits within the city's larger education strategy. These two objectives, reducing the dropout rate and re-engaging youth who have dropped out, are critical to ensuring a prepared and educated youth pipeline to compete in a demand-driven workforce. This section provides information on the principles underlying the Department of Labor, Employment and Training Administration's Youth Vision.

A. ETA's Youth Vision

Based on studies done by the Council on Competitiveness, creating dynamic regional and State economies requires infrastructure development, research and development, technology transfer which shifts innovation to commercialization, and knowledge and talent development. The public workforce system focuses on knowledge and talent development. The 21st century global economy demands a more highly educated workforce equipped with the skills to ensure career opportunities for American workers and to make America's businesses competitive in a world market. To produce this educated and skilled workforce, innovative ''K through Gray'' education and lifelong learning systems, economic development strategies, and workforce development investments at the regional, State, and federal levels must be designed and aligned.

The workforce investment system provides adults and youth with the necessary educational, occupational and other skill training and services needed by business and industry in the 21st century economy. Education initiatives, particularly alternative education programs, have taken on new importance within the workforce system. Efforts to create a skilled, well-trained, and demand-driven workforce are important for several reasons:

- A severe crisis faces our nation's workforce: too many youth are leaving high school without their diplomas, unprepared for post-secondary training and employment. The Educational Testing Service's ''One-Third of a Nation: Rising Dropout Rates and Declining Opportunities'' reports that one-third of all youth who begin ninth grade will not receive a high school diploma. Eleven percent of 16–24 year olds nationally, or 3.8 million youth, are out of school and have neither a diploma nor a GED. These youth represent an untapped labor pool and a valuable resource for employers. Our economy needs these youth to be part of the economy to compete globally.
- The connection between earning and learning: income and education are more closely linked than in any time in our history. Ninety percent of the fastest growing jobs require education and training beyond high school. College students earn on average seventy percent more than high school students. High school dropouts are four times more likely than college graduates to be unemployed. Low-income Americans have far higher rates of dropping out of high school and far lower rates of enrolling in college and obtaining a post-secondary credential than their middle or higher income peers. The earning power of high school dropouts has been in almost continuous decline over the past three decades; in 2002, the earnings of male dropouts declined thirty-two percent. Female dropouts experienced a fourteen percent decline.
- State and regional economies are being negatively impacted by low graduation rates: According to the study, ''The Costs and Benefits of an Excellent Education for All of America's Children,'' U.S. taxpayers could reap $45 billion if the nation were to cut one year's worth of high school dropouts in half. ''High school graduation is associated with higher incomes, better health, lower criminal activity, and lower welfare receipt,'' the report states. In total, the report identified a net economic benefit of $127,000 for each additional high school graduate. By adding the benefit per graduate from higher taxes, improved health, less crime, and fewer welfare payments, the authors estimate a public benefit of $209,000 in higher government revenues and lower government spending for each additional high school graduate.[2] The Center for Labor Market Studies at Northeastern University in Boston, Massachusetts prepared ''An Assessment of the Labor Market, Income, Health, Social, Civic and Fiscal Consequences of Dropping Out of High School: Findings for Massachusetts in the 21st Century.'' It delineated the negative private and social outcomes associated with being a high school dropout.
- Labor market outcomes: Youth who drop out of school have lower rates of labor force attachment, higher unemployment rates, lower employment rates, less full-time employment, lower weekly wages, lower annual earnings, lower lifetime earnings, and reduced employee benefits.
- Income outcomes: There is a higher incidence of income inadequacy problems over the lifetime (poverty, near poverty, low incomes), a higher dependence on cash public assistance income to support themselves, and higher dependence on in-kind transfers (food stamps, rental housing subsidies, Medicaid).
- Family outcomes: In terms of family outcomes, high school dropouts have lower marriage rates among men and women, higher rates of unmarried parents, poorer nutrition, health, cognitive, and schooling outcomes for their children.
- Health outcomes: High school dropouts have poorer quality of health, lower rates of health insurance coverage, higher use of Medicaid benefit, higher rates of physical/mental disability, and lower life expectancy.
- Civic Outcomes: Dropouts have lower voting rates in State and national elections, and lower rates of volunteering in civic, educational, and political organizations.
- Criminal Justice Outcomes: Criminal justice outcomes for dropouts include higher rates of incarceration in jails and prisons, higher victimization costs, and higher costs of maintaining prisons and jails.
- Other Outcomes: Dropouts pay less in payroll and Federal/State income taxes; contribute less to property tax payments due to lower home ownership rates and lower value homes; and have a higher receipt of cash transfer incomes and in-kind transfers (food stamps, rental subsidies, energy assistance, Medicaid), placing large net fiscal burdens on the rest of taxpayers.
- A new workforce ''supply pipeline'': ETA's Youth Vision recognizes out-of-school youth and those most at risk of dropping out as an important part of the new workforce ''supply pipeline'' that businesses need to fill job vacancies in the new knowledge-based economy. However, without re-connecting these youth to high quality educational opportunities, they will not be adequately prepared to participate in today's economy. ETA's Youth Vision focuses investment of WIA resources on connecting youth with high quality education and employment services. The full Youth Vision document is available at *http://www.doleta.gov/ryf/WhiteHouseReport/VMO.cfm.*

ETA is committed to supporting cities in their efforts to develop a blueprint which will lead to the creation of a high

[2] Levin, H. et al., The Costs and benefits of an Excellent Education for All of America's Children, January 2007, p.3. excerpted from Alliance for Excellent Education Straight A's newsletter, March 5, 2007, Volume 7, Number 5.

quality, innovative multiple education pathway system. These multiple education pathways will offer a variety of alternative learning opportunities that prepare youth for post-secondary education and help them to re-enter the workforce supply chain and compete for high quality jobs in a demand-driven system.

ETA's Youth Vision, developed over two years ago, began to address the problems created by the large number of youth leaving high school without a diploma. The increased national focus on the impact of high dropout rates on regional economic development has driven ETA's development of a multiple education pathways strategy which is designed to increase the quality and quantity of alternative education opportunities and post-secondary opportunities for formerly out-of-school youth. To address the challenges posed by dropouts, cities must develop systems that provide a variety of educational options for re-engaging drop outs and students at risk of dropping out. These grants are intended to provide the funds for communities to plan those systems.

B. Multiple Education Pathway Ecosystems

Multiple Education Pathway Ecosystems are comprised of a wide variety of academically rigorous and innovative alternative learning environments. At ETA, alternative learning environments broadly refer to schools or programs that are set up by States, school districts, or other community-based entities to serve young people who are not succeeding in a traditional public school environment. Alternative learning environments offer students opportunities to achieve in a different setting through creative and innovative teaching methods. While there are many different kinds of alternative schools and programs, they are often characterized by the following noteworthy attributes:

- High academic standards that are consistent with State NCLB standards;
- Creative and engaging instruction that emphasizes the connection between real life and learning;
- Clearly articulated academic and applied learning goals;
- Opportunities for youth to catch up and accelerate knowledge and skills particularly in the area of literacy and numeracy;
- Opportunities for achievement in science, technology, engineering, and math (STEM);
- A culture of high expectations for all students;
- High quality teachers who are certified in their content areas, establish a rapport with the students, are creative in their classrooms and play a role in designing curricula;
- Ongoing professional development;
- Low student/teacher ratios;
- Opportunities for connections with caring adults who support the students in negotiating the transition to adulthood;
- Flexible schedules;
- Well-maintained, clean, accessible and safe facilities;
- Connections to a range of community resources, including those that can assist with career development;
- Administrative and bureaucratic autonomy and operational flexibility; and
- Necessary supportive services.

In science there are many definitions of the term ecosystem; however, they all refer to communities or groups of different organisms working in concert with one another to form a complex web of interdependency. By referring to a multiple education pathway ecosystem, ETA is emphasizing the interdependency required between multiple partners in a community to address the issue of high dropout rates within the context of the city's overall secondary education system. Examples of cities that are developing or have developed multiple education pathway ecosystems can be found at the Youth Transition Funders Group Web site (*http://www.ytfg.org/about_OOS.html*).

Multiple education pathway ecosystems must be supported by a wide range of partners including the school district, community-based organizations, the public workforce system, higher education, business, and government agencies that serve youth, such as health and human services, juvenile justice, etc. and local chapters of national youth development organizations.

Multiple pathways to educational success are needed at every step of the way, ranging from essential early intervention and prevention strategies in the early years, to a multiplicity of high-quality alternative options within mainstream K–12 systems at the middle and high school levels, and finally to opportunities outside of the mainstream for those who have been unable to learn and thrive in the general education system. However, for purposes of this grant, the focus is on secondary and post-secondary educational opportunities.

For more information on the work that ETA has undertaken on multiple education pathways, please go to: *http://www.doleta.gov/youth%5Fservices/Alternative.cfm.*

C. Multiple Education Pathways Blueprint (MEPB) Grant Objectives

Funds made available through the MEPB grants will be used to carry out activities with the following core objectives:

- The development of multiple education pathway ecosystems that connect to regional talent and economic development strategies through data analysis and resource mapping;
- Increasing the quality and quantity of academically rigorous and innovative multiple education pathways;
- Providing a national focus on multiple education pathway strategies; and
- Supporting and connecting to other national efforts already underway through private foundation support.

D. Partnerships

Youth do not disconnect from traditional developmental pathways (or high schools for that matter) because of the failure of any one system. Likewise, reconnecting youth requires collaboration and coordination among multiple youth-serving systems: these include school and youth employment and training programs and education, as well as child protective service systems, the juvenile justice system, and a variety of health and human services agencies, such as mental health and substance abuse treatment agencies, crisis intervention centers, runaway and homeless youth shelters, and others. Other partners may include local chapters of national youth development organizations such as Distributive Education Clubs of America (DECA), Health Occupation Students of America (HOSA), Jobs for America's Graduates (JAG), Junior Achievement, and Skills USA. These types of partners are especially important in efforts to make academics more relevant and in making connections with the business community. It should be noted that ETA is not specifically endorsing or recommending the five example organizations and that they are merely illustrative of the types of organizations with which applicants may partner

Partnerships and partnership roles will vary depending on the applicant's strategy and participant needs; however, each collaborative partner should have a clearly defined role. These roles must be verified through a letter of commitment submitted by each partner. The letter of commitment must detail the role the partner will play in the project, including specific responsibilities and resources

committed, if appropriate. These letters should clearly indicate the partnering organization's unique contribution and commitment to the project. It is ETA's expectation that the leadership of this partnership will be provided by the city's mayor or the mayor's designee.

E. Allowable Activities

The following are allowable activities under this grant:

- Staffing to convene partners and lead efforts;
- Consortium/partnership development;
- Data collection and analysis;
- Development of funding strategies to sustain existing programs including strategies for accessing average daily attendance and dual enrollment funds;
- Identification of leveraged resources to support multiple education pathways;
- Benchmarking of programs locally and in other communities with similar needs, as well as benchmarking of ''systems'' in other similar communities;
- Development of plans based on gap analysis for the addition of new programs/services;
- Feasibility studies to develop MIS/data sharing strategies;
- Creation of a Request for Proposals (RFP) process locally to develop new education programs/program services based on thoughtful standards and best practice research;
- Development of a common case management system that will work across education programs;
- Development of a coordinated referral and intake system for young people;
- On-going evaluation;
- Activities that integrate existing alternative education programs and strategies into a system of pathways to graduation within a city;
- The addition of model programs to increase the variety of alternative learning opportunities; and
- The addition of evidence-based numeracy and literacy remediation strategies to existing programs.

II. Award Information

A. Award Amount

ETA intends to fund approximately 10 grants of $300,000 for Multiple Education Pathway blueprint development activities; however, this does not preclude ETA from funding grants at either a lower or higher amount, or funding a smaller or larger number of projects, based on the type and the number of quality submissions.

B. Period of Performance

Grants will be awarded for a one-year period of performance. At the Department's discretion, no-cost extensions may be granted. Pending the availability of funds, an open competition may be held in FY 2008 to support the implementation of Multiple Education Pathway System blueprints.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants are mayors of cities whose population is between 75,000 and 350,000 based on the 2000 Census and who have a cohort dropout rate of more than forty percent. To find the cohort rate for dropouts in the area being served, provide the 9th grade enrollment at each high school that serves youth from the city for 2001 and the graduating class for those same high schools in May/June 2005.

Applicants will demonstrate that the blueprint will be developed by a comprehensive partnership which includes a Superintendent of Schools and the Chairs of the local Workforce Investment Boards. The Superintendent of Schools and the Chairs of the local Workforce Investment Boards are required partners for this grant. The partnership may also include community colleges, businesses, community or faith-based organizations, and/or municipal or state agencies who work with at-risk youth such as the juvenile justice system.

B. Cost Sharing or Matching

Cost sharing or matching funds are not required as a condition for application, but leveraged resources are strongly encouraged and failure to commit and integrate leveraged resources into the project may have a significant impact on an applicant's ability to successfully compete for grant funds. While the amount of resources leveraged will not be factored into the applicant's score, applications will be scored based on the quality and the degree to which the source and use of leveraged funds are clearly explained and the extent to which they are integrated into the project in support of grant outcomes. As described in section V. 4., up to 20 points are available for this criterion.

IV. Application and Submission Information

A. Address To Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

The proposal will consist of two separate and distinct parts—a cost proposal (I) and a technical proposal (II). Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered.

Part I. The Cost Proposal. The Cost Proposal must include the following three items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the authorized representative of the applicant.
- All applicants for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.
- The SF 424A Budget Information Form (available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should break down the budget and leveraged resources by project activity, and should discuss precisely how the administrative costs support the project goals. The budget should also include travel funds for at least one national meeting.

Please note that applicants that fail to provide a SF 424, SF 424A and a budget narrative will be removed from consideration prior to the technical review process. If the proposal calls for integrating WIA or other Federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative and in Part II of the proposal. The amount of Federal funding requested for a one-year period

of performance should be shown together on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Part II. The Technical Proposal. The Technical Proposal will demonstrate the applicant's capability to lead efforts either to develop a MEPB for the city or to implement an existing MEPB in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in Part V Section A of this SGA. The Technical Proposal is limited to 15 double-spaced single-sided pages with 12 point text font and one-inch margins. Any materials beyond the 15-page limit will not be reviewed. Also, applicants should number the proposal beginning with page number 1.

In addition to the 15-page proposal, the applicant must provide an organization chart that reflects various partners' roles and responsibilities and how the project will be staffed. Also, the applicant must provide a timeline outlining project activities; letters of commitment from partners; and a two-page Abstract summarizing the proposed project including applicant name, project title, and the funding level requested. These additional materials do not count against the 15-page limit for the Technical Proposal, but may not exceed twenty (20) pages. Any materials beyond the 15-page limit will not be reviewed.

Applicants submitting proposals in hard copy must submit an original signed application (including the SF–424) and one (1) ''copy-ready'' version free of bindings, staples, or protruding tabs to ease in the reproduction of the proposal by ETA. Applicants submitting proposals in hard copy are also requested, though not required, to provide an electronic copy of the proposal on CD–ROM.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is June 7, 2007. Applications must be received at the address below, or electronically received at the Web site below, no later than 4 p.m. (Eastern Time), except as identified in the ''Late Applications'' paragraph below. Applications sent by e-mail, telegram, or facsimile (fax) will not be honored. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: James W. Stockton, Reference SGA/DFA PY 06–12, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address.

Applicants may apply online at *http://www.grants.gov* by the deadline specified above. Any application received after the deadline will not be accepted. For applicants submitting electronic applications via Grants.gov, please note that it may take several days to complete the ''Get Started'' step to register with Grants.gov. It is strongly recommended that these applicants immediately initiate this step in order to avoid unexpected delays that could result in the disqualification of their application. If submitted electronically through *http://www.grants.gov*, applicants should save application documents as a .doc or .pdf file.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application required to be received by the 20th of the month must be post marked by the 15th of that month) or (b) was sent by professional overnight delivery service or submitted on Grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness.

Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

E. Funding Restrictions

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., 29 CFR 95.27; Non-Profit Organizations-OMB Circular A–122. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants are not entitled to reimbursement of pre-award costs.

Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance. The government is generally prohibited from providing direct financial assistance for inherently religious activities. See 29 CFR Part 2, Subpart D. Provision relating to the use of indirect support (such as through vouchers) are at 29 CFR 2.33(c) and 20 CFR 667.266. These grants may not be used to directly support religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the Workforce Investment Act of 1998 and ETA regulations implementing the Workforce Investment Act, a recipient may not use direct Federal assistance to train a participant in religious activities, or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. See 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the

Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.''

Indirect Costs. As specified in OMB Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. In order to utilize grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal Cognizant Agency either before or shortly after the grant award.

Administrative Costs. An entity that receives a grant to carry out a project or program may not use more than ten (10) percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an indirect cost rate agreement from its Federal Cognizant Agency as specified above.

ETA Intellectual Property Rights. Grantees must agree to provide DOL/ETA a fully paid, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed or for which ownership was purchased under an award, including but not limited to curricula, training models, technical assistance products, and any related materials, and to authorize them to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

F. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate proposals for a Multiple Education Pathways Grant. These criteria and point values are:

Criterion	Points
1. Statement of Need	10
2. Partnership Composition/Capacity and Management	30
3. Work Plan/Timeline, Strategies, and Outcomes	40
4. Leveraged Resources	20
Total Possible Points	100

1. Statement of Need (10 Points)

Please describe the city, its current education system and its connection to the regional economy. Identify the need for a Multiple Education Pathways blueprint. The blueprint developed must encompass the entire city. Required information includes the city's population, the number of secondary schools that serve the city, and the number of youth currently enrolled in them. Applicant must also provide the cohort dropout rate as well as the number of 18–24 year olds without a high school diploma.[3] To find the city's cohort rate for dropouts, provide the 9th grade enrollment at each high school within the city for 2001 and the graduating class for those same high schools in May/June 2005. Please provide the unemployment rate for the city and region. All of these indicators should be presented in chart form and the applicant must provide the sources for the data provided.

Please specifically indicate why reducing the dropout rate, re-engaging youth who have already dropped out, and increasing the college enrollment rate is important to the regional economy. Please describe the local labor market needs of employers in the city and region. Applicants should describe how the educational challenges faced by youth in the city have impacted economic development in the region, the burdens placed on public systems/resources, and other community quality of life issues.

Applicants will be evaluated on the clear and specific need for a multiple education pathway strategy in the city based on the dropout rate, the impact of dropout rates on the city and regional economy, the gap between local labor market needs and existing talent, the clear description of and depth of the burden on public systems/resources and other quality of life issues in the city.

2. Partnership Composition/Capacity and Management (Total 30 Points)

Disadvantaged youth possess a wide range of challenges that must be addressed by multiple strategies, organizations, and agencies. A comprehensive partnership is a critical component in the development of a successful MEPB blueprint. In this section describe the composition, capacity, and management of your partnership, why this particular team was assembled, and how it will function.

2a. Describe the composition and capacity of the partnership for MEPB Development. (20 points)

Please provide a description of the partnership that will develop the MEPB for the city. Applicants should provide information on how the partners were selected and what their interest is in coming to and staying at the table to build a system of quality alternative learning environments. Specifically, describe in detail the activities to be undertaken by partners, the level of commitment from each partnering organization, and their qualifications to assist on this project. As an attachment, the applicant must include letters of commitment from key partners that describes the role they will play in developing the city's multiple education blueprint. The applicant should also demonstrate the strength and maturity of the partnership including previous collaboration on projects.

Please describe the role of the mayor, particularly in providing leadership throughout the process of blueprint development. Please fully describe the role of the school district and the workforce system in the development of the MEPB. Please describe how post-secondary institutions will participate in this partnership.

Please fully describe the specific role of employers in the proposed program, such as their role in developing the proposed program and how they will participate pro-actively in generating community and political will to sustain MEPB projects in the city.

Please fully describe how key partners have attracted private foundation support for similar initiatives for at-risk youth and how this might contribute to the success of this project. Please fully describe the type of academic and demographic resources which will be available to the partnership to use in the development of the blueprint.

Scoring under this criterion will be based on the extent to which applicants provide evidence of the following:

- The degree and depth of leadership demonstrated by the mayor;
- Evidence of high level interest in strengthening the city's education system particularly for out-of-school youth;

[3] To obtain these indictors, use census tract data from the 2000 census—go to *http://factfinder.census.gov* and use the link on the left for People.

• Evidence of buy-in from key stakeholders including local elected officials, K–12 school boards and superintendents, the workforce system, community colleges, etc.;

• The comprehensiveness of the partnership and the degree to which each key partner plays a committed role, either financial or non-financial, in the proposed project;

• The breadth and depth of each key partner's contribution, their knowledge and experience concerning the proposed grant activities, and their ability to impact the success of the project; and

• Evidence, including letters of commitment, that key partners have expressed a clear dedication to the project and understand their areas of responsibility.

2b. Describe how will this project be administered. (10 points)

Applicants must describe the proposed project management structure including, where appropriate, the lead agency (in most instances, the mayor's office), the identification of a proposed project manager, discussion of the proposed staffing pattern, the time commitment of the proposed staff, their roles, and the qualifications and experience of key staff members. If a lead agency other than the mayor's office is selected to manage the MEPB project, the application must provide a detailed rationale for why this choice was made.

Please provide evidence of a plan for interaction and communication between partners and the demonstrated ability and capacity of the lead agency to successfully manage partnerships. Please describe the capacity of the partnership to accomplish the goals and outcomes of the project, including the ability to collect and manage data. Describe how the partnership has or will engage private foundations in the project.

Please fully describe the lead agency's previous experience in operating grants from either Federal or non-Federal sources. Describe the fiscal controls in place for auditing and accountability procedures.

Scoring under this criterion will be based on the extent to which applicants provide evidence of the following:

• The time commitment of the proposed staff is sufficient to ensure proper direction, management, and timely completion of the project;

• The roles and contribution of staff, consultants, and collaborative organizations are clearly defined and linked to specific objectives and tasks;

• The background, experience, and other qualifications of the staff are sufficient to carry out their designated roles;

• The degree to which the partnership, under direction from the lead agency, has significant capacity to accomplish the goals and outcomes of the project, including the ability to collect and manage data;

• The ability of the partnership to engage private foundations in the project; and

• The ability of the partnership to identify and utilize academic research centers (i.e., university, think tanks) to support this project.

3. Strategies, Work Plan/Timeline, and Outcomes (40 Points Total)

In this section the applicant will describe how the blueprint will be developed including the types of activities and strategies which will be utilized and will include a clear work plan with a timeline that outlines how the work will be accomplished. In addition, the applicant must provide information on the outcomes which are expected to be achieved.

3a. Please provide a description of the strategies that will be used to develop a Multiple Education Pathway system in the city. (20 points)

Applicants will provide a detailed description of the strategies that will be used to research and respond to the challenges described in the Statement of Need section of this proposal and to develop the city's blueprint for a multiple education pathway system. Please describe in detail how data on the city's dropout population will be analyzed and how data will be used to pinpoint where youth become at risk for dropping out. Describe the plan to review policies (financial, disciplinary, and other) at both the local and state level to determine where these policies present obstacles to creating Multiple Education Pathways. Please describe how the partnership will assess existing education programs that serve youth who are at risk of dropping out of school and youth who have dropped out of school in your city. Please describe how promising models of alternative education will be identified and how research will be used to develop a MEP system in your city. Please describe how youth will be involved in the development of the blueprint. Please describe how community awareness and support for this will be produced and sustained. Please describe any other strategies that will be employed in the development of the city's Multiple Education Pathway Blueprint.

Scoring under this criterion will be based on the extent to which applicants provide evidence of the following:

• The ability to conduct a community gap analysis that identifies the number of young people who are out of school and their programmatic needs and the number of programs that serve this population and identify gaps in services;

• The ability to map out the ''system'' currently in place in the community for intake, assessment, program and additional services, data collection and analysis, and to follow up with youth and identify areas of need;

• That the blueprint will be integrated with the city's overall educational strategy;

• That education and other policy issues that impact youth at local and state level will be assessed including access to average daily attendance funding, dual-enrollment funding, and disciplinary policies;

• A strategy to engage youth in the development of the blueprint;

• The potential for developing an ''actionable'' Multiple Education Pathway blueprint;

• The potential of the plan for increasing high school graduation rates in the city;

• The potential of the plan for increasing post-secondary enrollment for youth in the city; and

• The potential of the plan for increasing reading and math skills for youth who are behind in basic skills.

3b. Please provide the outcomes that will be achieved as a result of the proposed strategies and how these outcomes will be measured. (10 points)

Please provide a detailed description of the outcomes that will be achieved. Describe how these outcomes will be measured. Success may be measured on, but is not limited to, the following criteria:

• Quality product development;

• Meeting the benchmarks set forth in the work plan time line;

• The ability to identify funding streams or other leveraged resources that support implementation of the plan;

• Funding priorities;

• Depth of innovation and creativity;

• Potential of the blueprint to be implemented;

• Depth and engagement of partners; and

• Improved community wide understanding of the nature, challenges, and solutions to the dropout problem in the city.

Points will be awarded based on the following:

• The extent to which the expected project outcomes are clearly identified and measurable, realistic, and consistent with the objectives of the project;

• The ability of the partnership to achieve the stated outcomes within the timeframe of the grant; and

• The appropriateness of the outcomes with respect to the challenges described in the Statement of Need section of this proposal.

3c. Please provide a work plan with timeline that organizes how the strategies described in your proposal will be accomplished. (10 points)

Please provide a detailed work plan to demonstrate how the blueprint will be developed. The work plan should include a timeline as well as the lead for each activity/strategy. Applicants are encouraged to create tight work plans that will produce actionable activities during the period of performance for this grant. It is not necessary to have an endless list of strategies but rather strategies that will bring about the desired outcomes and address the challenges outlined in the Statement of Need section of this proposal.

Points will be assessed on the potential for the work plan to achieve desired outcomes, the interim benchmarks, and the viability of the timeline.

4. Leveraged Resources (20 Points)

Leveraged resources are strongly encouraged and should be described in this section of the narrative. Leveraged funds should not be included on budget forms. Federal, state, local, or private resources can be included as leveraged resources. The amount of resources leveraged will not be factored into the score for this section. Rather, applications will be scored based on the quality and the degree to which the source and use of leveraged funds are clearly explained and the extent to which they are integrated into the project in support of grant outcomes. The description of leveraged resources must be supported by explicit memorandums of understanding (MOUs) or letters of commitment and describe the resources and should fully describe how the value of the resources was calculated.

Scoring on this factor will be based on the extent to which the applicant fully describes the amount, commitment, nature, and quality of leveraged resources. Important elements of the explanation include:

• Evidence, such as letters of commitment or memorandums of understanding (MOUs), that key partners have expressed a clear commitment to provide the resource;

• The nature and quality of the leveraged resources and a description of how each contribution will support the proposed grant activities; and

• The strategic value of the leveraged resources and how well these resources support the development of the MEPB.

B. Review and Selection Process

Applications will be accepted after the publication of this announcement until the closing date. A technical review panel will make a careful evaluation of applications against the criteria set forth in Section V of this Solicitation. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 100 points may be awarded to an application, based on the required information described in Section V of this Solicitation. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural, and geographic balance; and which proposals are most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his/her attention. The Government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant (including electronic signature via E-Authentication on *http://www.grants.gov*).

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution. Applicants not selected for award will be notified by mail.

B. Administrative and National Policy Requirements

All grantees, including faith-based organizations, are subject to all applicable Federal laws (including provisions of appropriation laws), regulations, and the applicable Office of Management and Budget (OMB) Circulars. The grant(s) awarded under this SGA must comply with all provisions of this solicitation and are subject to the following administrative standards and provisions, as applicable to the particular grantee:

1. 20 Code of Federal Regulations (CFR) Part 667.220 (Administrative Costs).

2. Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

3. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

4. All entities must comply with 29 CFR parts 93 and 98 and, where applicable, 29 CFR parts 96 and 99.

5. In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to received Federal funds and grants.

6. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

7. 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training.

8. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

9. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

10. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

11. 29 CFR part 35—Nondiscrimination on the Basis of Age in Program or Activities Receiving Federal Financial Assistance form the Department of Labor.

12. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

13. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA).

Note: Except as specifically provided in this Notice, ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, ETA's award does not provide the justification or basis to sole source the procurement, *i.e.*, avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

C. Reporting

Quarterly financial reports and quarterly progress reports will be submitted by the grantee electronically. The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF 269) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System and information and instructions will be provided to grantees.

Quarterly Progress Reports. The grantee must submit a quarterly progress report to their designated Federal Project Officer within 30 days after the end of each quarter. This report should provide a detailed account of activities undertaken during that quarter. Grantees must agree to meet ETA reporting requirements. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes.
2. Progress toward performance outcomes, including updates on product, curricula, and training development.

Final Report. A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document capacity building and training approaches. The final report should also include copies of all deliverables, e.g. curricula and competency models. After responding to ETA questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by ETA for preparing the final report.

VII. Agency Contacts

For further information regarding this SGA, please contact B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3296 (please note this is not a toll-free number). Applicants should fax all technical questions to (202) 693–2705 and must specifically address the fax to the attention of B. Jai Johnson and should include SGA/DFA PY 06–12, a contact name, fax and phone number, and email address. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm, at http://www.grants.gov,* and in the **Federal Register**.

VIII. Additional Resources of Interest to Applicants and Other Information Resources for the Applicant

ETA maintains a number of web-based resources that may be of assistance to applicants:

- The Web site for the Employment and Training Administration (*http://www.doleta.gov*) is a valuable source for background information on the President's High Growth Job Training Initiative.
- The Workforce [3] One Web site (*http://www.workforce3one.org*) is a valuable resource for information about demand-driven projects of the workforce investment system, educators, employers, and economic development representatives.
- America's Service Locator (*www.servicelocator.org*) provides a directory of the nation's One-Stop Career Centers.
- Applicants are encouraged to review ''Help with Solicitation for Grant Applications'' (*http://www.dol.gov/cfbci/sgabrochure.htm*).
- For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government'' (*http://www.whitehouse.gov/government/fbci/guidance/index.html*).

Other Information

OMB Information Collection No. 1205–0458

Expires September 30, 2009

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. *Please do not return your completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation.*

This information is being collected for the purpose of awarding a grant. The Department of Labor will use the information collected through this ''Solicitation for Grant Applications'' to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Applicants must submit this information in order to be considered for award of this grant. Unless otherwise specifically noted in this announcement, we will not consider information submitted in the respondent's application to be confidential.

Signed at Washington, DC, this 1st day of May, 2007.

James W. Stockton,

Employment and Training Administration, Grant Officer.

[FR Doc. E7–8720 Filed 5–7–07; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Slope and Shaft Sinking Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 9, 2007.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via E-mail to *Ferraro.Debbie@dol.gov,* along with an original printed copy. Ms. Ferraro can

be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

The standard 30 CFR 77.1900 was enacted in 1971 and was amended in 1982 and again in 1995. The standard requires underground coal mine operators to develop a prudent engineered design plan to develop a slope or shaft whenever an operator decides to open such a coal mine. The plan is required by the standard and is to be reviewed and approved by MSHA before the actual hazardous work begins.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Slope and Shaft Sinking Plans. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Rules and Regs'' then ''Paperwork Reduction Act Supporting Statements'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

The 78 slope or shaft development plans that MSHA receives on an annual basis, are reviewed to ensure that the required work is performed in a safe manner, and it protects those miners performing the work. Prudent engineering design does evolve along with improved machinery to perform the work, but there has not been any revision to the requirements for such a plan. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Slope and Shaft Sinking Plans.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Slope and Shaft Sinking Plans.

OMB Number: 1219–0019.

Recordkeeping: Records are normally required to be kept for 3 years.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 77.1900.

Total Respondents: 65.

Frequency: On occasion.

Total Responses: 65.

Estimated Total Burden Hours: 1,300.

Total Burden Cost (operating/maintaining): $1,061.

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 at Arlington, Virginia, this 2nd day of May, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–8722 Filed 5–7–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–034)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)((i). NASA hereby gives notice of its intent to grant a partially exclusive worldwide license to practice the inventions described and claimed in NASA Case Number LAR–16571–1 entitled ''Magnetic Field Response Sensor For Conductive Media,'' U.S. Patent 7,075,295; NASA Case Number LAR–16571–2 entitled ''Magnetic Field Response Sensor For Conductive Media,'' U.S. Patent Application Number 11/421,886; NASA Case Number LAR–16908–1 entitled ''Magnetic Field Response Measurement Acquisition System,'' U.S. Patent 7,086,593; NASA Case Number LAR–17155–1 entitled ''Wireless Fluid Level Measuring System,'' U.S. Patent Application Number 11/229,438; NASA Case Number LAR–17280–1 entitled ''Magnetic Field Response Measurement Acquisition System,'' U.S. Patent Number 7,159,774; and NASA Case Number LAR–17480–1 entitled ''A Method To Calibrate Magnetic Response Fluid-Level Sensors Using Complete Sensor Immersion In Fluid,'' U.S. Patent Application Number 60/908,698, to Caplan Taylor Enterprises LLC, having its principal place of business in Newport News, Virginia. The field of use may be limited to marine. The patent rights in these inventions have been or will be assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681–2199. Telephone (757) 864–3221; Facsimile (757) 864–9190.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 141, Telephone (757) 864–3230; Facsimile (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: April 27, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 07–2243 Filed 5–7–07; 8:45 am]

BILLING CODE 7510–13–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will convene a public meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) June 12–13, 2007. A sample of agenda items to be discussed includes: (1) NARM legislation, transition plan, and guidance; (2) status of specialty board applications for NRC recognition; (3) units of air kerma strength vs. activity; (4) patient release and security checkpoints; (5) Y–90 microspheres guidance; (6) sentinel lymph node biopsies; (7) new modalities; (8) training and experience implementation issues. To review the agenda, see *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda/* or contact Ashley M. Tull. Contact information for Ms. Tull is provided below.

Purpose: Discuss issues related to 10 CFR 35, Medical Use of Byproduct Material.

Date and Time: June 12–13, 2007, from 8 a.m. to 5 p.m.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North, Room T2–B3, 11545 Rockville Pike, Rockville, MD 20852–2738.

Contact: Ashley M. Tull by telephone (301) 415–5294; e-mail *amt1@nrc.gov*; or mail Office of Federal and State Materials, U.S. Nuclear Regulatory Commission, Mail Stop T8–F3, Washington, DC 20555–0001.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

2. Persons who wish to provide a statement should submit an e-mail or mail a reproducible copy to Ms. Tull at the contact information provided. Submittals must be e-mailed or postmarked by June 1, 2007, and must pertain to the topics on the agenda for the meeting.

3. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

4. The transcript and written comments will be available on NRC's Web site (*http://www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about September 12, 2007.

5. Attendees are requested to notify Ms. Tull, at the previously stated contact information, of their planned attendance if special services, such as those for the hearing impaired, are necessary.

Dated at Rockville, Maryland, this 2nd day of May 2007.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–8797 Filed 5–7–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meetings

DATES: Weeks of May 7, 14, 21, 28, June 4, 11, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 7, 2007

Monday, May 7, 2007

1:30 p.m. Briefing on Office of Federal and State Materials and Environmental Management Programs (FSME) Programs, Performance, and Plans (Public Meeting) (*Contact:* George Deegan, 301–415–7834).

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

Week of May 14, 2007—Tentative

There are no meetings scheduled for the Week of May 14, 2007.

Week of May 21, 2007—Tentative

There are no meetings scheduled for the Week of May 21, 2007.

Week of May 28, 2007—Tentative

Tuesday, May 29, 2007

1:30 p.m. NRC All Hands Meeting (Public Meeting) (Contact: Rickie Seltzer, 301–415–1728), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Wednesday, May 30, 2007

9:30 a.m. Briefing on Results of the Agency Action Review Meeting (AARM)—Materials (Public Meeting) (Contact: Duane White, 301–415-6272).

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

10:15 a.m. Discussion of Security Issues (Closed-Ex.1).

Thursday, May 31, 2007

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM)—Reactors (Public Meeting) (*Contact:* Mark Tonacci, 301–415–4045).

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

Week of June 4, 2007—Tentative

Thursday, June 7, 2007

1:30 p.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (*Contact:* Frank Gillespie, 301–415–7360).

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

Week of June 11, 2007—Tentative

There are no meetings scheduled for the Week of June 11, 2007.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at

DLC@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 3, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–2288 Filed 5–4–07; 1:48 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 13, 2007 to April 26, 2007. The last biweekly notice was published on April 24, 2007 (72 FR 20375).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The

petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station (Oyster Creek), Ocean County, New Jersey

Date of amendment request: November 27, 2006.

Description of amendment request: The amendment would revise the Oyster Creek Technical Specification (TS) 6.9.1.d, ''Annual Radioactive Effluent Release Report,'' by changing the requirement to submit the report within 60 days of January 1. Specifically, the revised requirement would be to submit the report prior to May 1 of each year.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves a revision to the required submittal date for the Radioactive Effluent Release Report, and is administrative in nature. The change will not alter the physical design or operation of any plant structure, system, or component.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in nature. The proposed change has no impact on the design, function or operation of any plant structure, system or component and does not affect any accident analyses. Accordingly, the change does not introduce any new accident initiators, nor does it reduce or adversely affect the capabilities of any plant structure, system, or component to perform their safety function.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there is no change being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LCC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: March 28, 2007.

Description of amendment request: The proposed change would revise the required wattage specified in the River Bend Station, Unit 1 (RBS), Technical Specification 5.5.7.e, Ventilation Filter Testing Program, for the Control Room Fresh Air System (CRFAS) heater for testing. The proposed required wattage for testing the CRFAS heater would be revised from 23 ± 2.3 kilowatt (kW), to ''≥≥15 kW.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change specifies the required power (in kW) for the Control Room ventilation electric heaters to decrease relative humidity of the air to less than 70% relative humidity as required for proper operation of the charcoal absorber components based on calculated requirements. The heater will continue to perform its intended design function as designed. The heater is not an accident precursor.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The heater will continue to perform its function as designed. The heater provides humidity control for the Control Room filter unit during a design basis accident. Changing the test acceptance criteria to a calculated value has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. No change has been made to the design, function or method of performing testing. No safety-related equipment or safety functions are altered as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

No margin of safety is changed as a result of this change. The heater will continue to perform its design function. Testing methodology has not changed. The function of the heater is unchanged. The acceptance criterion has been changed to a calculated value rather than the name plate rating to make testing more realistic. The heater will continue to operate to perform its intended design function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: March 30, 2007.

Description of amendment request: The proposed amendment would revise Arkansas Nuclear One, Unit 2 (ANO–2) Technical Specification (TS) to support a partial re-rack of the storage racks in the ANO–2 spent fuel pool (SFP). The proposed amendment would revise TS 3.9.12, ''Fuel Storage,'' and its associated tables, figures, and surveillance requirements, TS 5.3, ''Fuel Storage,'' and add TS 6.5.17, ''Metamic Coupon Sampling Program.'' The ANO–2 TS 3.9.12 would be changed to: (1) Support higher fuel assembly U–235 enrichment; (2) apply the appropriate loading restrictions; and (3) delete the dry cask loading restrictions. ANO–2 TS 5.3.1b would be changed to reflect a different SFP boron concentration that is needed to assure K-effective (K_{eff}) remains less than or equal to 0.95. ANO–2 TS 5.3.2a would be modified to reflect a higher fuel assembly U–235 enrichment. A new coupon sampling program would be added as TS 6.5.17. In addition, TS Surveillance Requirement 4.9.12.d would be added to direct performance of the coupon sampling program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Fuel Handling Accidents

The current licensing bases for the dose consequences associated with a fuel handling accident (FHA), which was performed considering a maximum U–235 enrichment of 5.0 wt% and a maximum burnup of 65 megawatt-days/kilograms of uranium, does not exceed 25% of 10 CFR [Title 10 of the Code of Federal Regulations] 100 limits. The proposed change is bounded by the current analysis and therefore, there is no increase in the dose consequences associated with a[n] FHA.

During rack removal and installation, safe load paths will be determined and written procedures followed to ensure that the racks are not carried over any fuel assemblies. With the proposed limitations on rack and cask movement, there should be no impact to spent fuel and no radiological consequences due to fuel rack installation. The racks will be moved with a single failure proof crane. Therefore, a postulated drop of a rack is not a credible accident.

The probability of having a[n] FHA has not increased.

Criticality Accidents Associated With a Dropped Fuel Assembly

The three fuel assembly drop accidents described below can be postulated to increase reactivity. However, for these accident conditions, the double contingency principle of ANS [American National Standard] N16.1–1975 is applied. This states that it is unnecessary to assume two unlikely, independent, concurrent events to ensure protection against a criticality accident. Thus, for accident conditions, the presence of soluble boron in the storage pool water can be assumed as a realistic initial condition since its absence would be a second unlikely event.

Three types of drop accidents have been considered: a vertical drop accident, a horizontal drop accident, and an inadvertent drop of an assembly between the outside periphery of the rack and the pool wall. The structural damage to the pool liner, the racks, and fuel assembly resulting from a dropped fuel assembly striking the rack, the pool floor, or another assembly located in the racks is primarily dependent on the mass of the falling object, drop height, and structural configuration of the rack. The two parameters related to the fuel assembly (mass and drop height) are not changed by the proposed rack modification. The new rack design was evaluated for all postulated structural drops and the structural damage to these items remains within acceptable limits. In all cases the proposed TS limit for boron concentration ensures that a five percent subcriticality margin is met for the postulated accidents.

Criticality Accidents Associated With a Misplaced Fuel Assembly

The fuel assembly misplacement accident was considered for all storage configurations. An assembly with high reactivity is assumed to be placed in a storage location which requires restricted storage based on initial U–235 loading, cooling time, and burnup. The presence of boron in the pool water assumed in the analysis has been shown to offset the worst case reactivity effect of a misplaced

fuel assembly for any configuration. This boron requirement is less than the boron concentration required by the ANO–2 TS. Thus, a five percent subcriticality margin is met for postulated accidents, since any reactivity increase will be much less than the negative worth of the dissolved boron.

Optimum Moderation Accident

For fuel storage applications in the SFP, water is usually present. An ''optimum moderation'' accident is not a concern in SFP storage racks because the rack design prevents the preferential reduction of water density between the cells of a rack (e.g., boiling between cells). In addition, the criticality analysis has demonstrated that the effective neutron multiplication factor (K_{eff}) will remain less than 1.0 when the SFP is fully flooded with unborated water.

An ''optimum moderation'' accident in the new fuel vault was evaluated and the conclusions of that evaluation confirmed that the reactivity effect is less than the regulatory limit of 0.98 for K_{eff}.

Loss of SFP Cooling

The proposed modification to the ANO–2 SFP racks does not result in a change to the SFP cooling system and therefore the probability of a loss of SFP cooling is not increased.

The consequences of a loss of spent fuel pool cooling were evaluated and found to not involve a significant increase as a result of the proposed changes. A thermal-hydraulic evaluation for the loss of SFP cooling was performed. The analysis determined that the minimum time to boil is about two hours following a complete core off load and a complete loss of forced cooling. This provides sufficient time for the operators to restore cooling or establish an alternate means of cooling before the water shielding above the top of the racks falls below 10 feet. Therefore, the proposed change represents no increase in the consequences of loss of pool cooling.

Seismic Event

The proposed rack modification does not result in an increase in the probability or consequences of a design basis seismic event. The new racks were analyzed and all structural acceptance criteria are shown to be met during seismic events. The structural capability of the SFP and liner will not be exceeded as a result of the new rack design.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The presence of soluble boron in the pool water assumed in the criticality analysis is less than the boron concentration required by the ANO–2 TSs. Thus, a five percent subcriticality margin is met for postulated accidents, since any reactivity increase will be much less than the negative worth of the dissolved boron.

No new or different types of fuel assembly drop scenarios are created by the proposed change. During the installation of the new racks, the possibility of dropping a rack is not a credible accident since a single failure proof crane and safe load paths will be used for rack movements. No new or different fuel assembly misplacement accidents will be created. Administrative controls currently exist to assist in assuring fuel misplacement does not occur.

No changes are proposed to the spent fuel pool cooling system or makeup systems and therefore no new accidents are considered related to the loss of cooling or makeup capability.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

With the presence of a nominal boron concentration, the SFP storage racks will be designed to assure a subcritical array with a five percent subcritical margin (95% probability at the 95 % confidence level). This has been verified by criticality analyses.

Credit for soluble boron in the SFP water is permitted under accident conditions. The proposed modification that will allow installation of the new racks does not result in the potential of any new misplacement scenarios. Criticality analyses have been performed to determine the required boron concentration that would ensure the maximum K_{eff} does not exceed 0.95. The ANO–2 TS for the minimum SFP boron concentration is greater than that required to ensure K_{eff} remains below 0.95. Therefore, the margin of safety defined by taking credit for soluble boron will be maintained.

The structural analysis of the new spent fuel racks along with the evaluation of the SFP structure indicated that the integrity of these structures will be maintained. The structural requirements were shown to be satisfied, thus the safety margins were maintained.

In addition the proposed change includes a coupon sampling program that will monitor the physical properties of the Metamic™ absorber material. The monitoring program provides a method of verifying that the assumptions used in the SFP criticality analyses remain valid.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: March 1, 2007.

Description of amendment request: The proposed change would revise Grand Gulf Nuclear Station, Unit 1, Technical Specification (TS) Tables 3.3.5.1–1 and 3.3.5.2–1 to modify the allowable values of the low Condensate Storage Tank (CST) level setpoints for the High Pressure Core Spray (HPCS) and Reactor Core Isolation Cooling (RCIC) suction swap from the CST to the Suppression Pool. The change is necessary to correct an error in the original plant design. The error, under certain conditions, could prevent a swap of the HPCS and RCIC suction flow paths to the Suppression Pool. Currently, the erroneous setpoints have been corrected to a higher level, and are administratively controlled in accordance with the Administrative Letter 98–10, ''Dispositioning of Technical Specifications That Are Insufficient To Assure Plant Safety.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change will adjust the setpoint for an automatic swap of the suction for the HPCS and RClC systems from the Condensate Storage Tank (CST) to the Suppression Pool. The Suppression Pool is the source of water credited in the accident analyses. This transfer is not the initiator of any analyzed accident. The setpoint adjustment will allow a transfer of the suction to an assured safety-related water source earlier in the event and will have no effect on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Transfer of the suction source for HPCS and RClC will occur sooner as a result of this change. No new operational conditions beyond those currently allowed are introduced. This change is consistent with the safety analyses assumptions and current

plant operating practices. This simply corrects the setpoint consistent with the accident analyses and therefore cannot create the possibility of a new or different kind of accident from any previously evaluated accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not reduce safety, but rather allows the transfer from the CST to the Suppression Pool sooner. The Suppression Pool is the source of water credited in the accident analyses. This change is consistent with the safety analyses assumptions and current plant operating practices. No new operational conditions beyond those currently allowed are created by these changes.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 18, 2006.

Description of amendment request: A change is proposed to the technical specifications (TSs) of LaSalle County Station, Units 1 and 2 (LaSalle), consistent with TS Task Force Traveler No. 432 (TSTF–423), ''Technical Specification End States, NEDC–32988-A,'' to the standard TSs for boiling-water reactor plants, to allow for some systems entry into hot shutdown rather than cold shutdown, to repair equipment if risk is assessed and managed consistent with the program in place for complying with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.65(a)(4). The proposed amendment would modify the TS to risk-informed requirements regarding selected required action end states provided in TSTF–423, Revision 0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a change to certain required end states when the TS Completion Times for remaining in power operation will be exceeded. Most of the requested technical specification (TS) changes are to permit an end state of hot shutdown (Mode 3) rather than an end state of cold shutdown (Mode 4) contained in the current TS. The request was limited to: (1) Those end states where entry into the shutdown mode is for a short interval, (2) entry is initiated by inoperability of a single train of equipment or a restriction on a plant operational parameter, unless otherwise stated in the applicable technical specification, and (3) the primary purpose is to correct the initiating condition and return to power operation as soon as is practical. Risk insights from both the qualitative and quantitative risk assessments were used in specific TS assessments. Such assessments are documented in Section 6 of GE NEDC–32988, Revision 2, ''Technical Justification to Support Risk Informed Modification to Selected Required Action End States for BWR Plants.'' They [risk assessments] provide an integrated discussion of deterministic and probabilistic issues, focusing on specific technical specifications, which are used to support the proposed TS end state and associated restrictions. The [NRC] staff finds that the risk insights support the conclusions of the specific TS assessments. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident after adopting proposed TSTF–423, are no different than the consequences of an accident prior to adopting TSTF–423. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create The Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). If risk is assessed and managed, allowing a change to certain required end states when the TS Completion Times for remaining in power operation are exceeded, i.e., entry into hot shutdown rather than cold shutdown to repair equipment, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change and the commitment by the licensee to adhere to the guidance in TSTF–IG–05–02, Implementation Guidance for TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988-A,'' will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change allows, for some systems, entry into hot shutdown rather than cold shutdown to repair equipment, if risk is assessed and managed. The [Boiling Water Reactor Owners Group] BWROG's risk assessment approach is comprehensive and follows [NRC] staff guidance as documented in [Regulatory Guides] RGs 1.174 and 1.177. In addition, the analyses shows that the criteria of the three-tiered approach for allowing TS changes are met. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A risk assessment was performed to justify the proposed TS changes. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

LaSalle has reviewed the proposed no significant hazards consideration determination published on March 23, 2006, (71 FR 14743) as part of the consolidated line item improvement and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 28, 2007.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 5.2.2, ''Plant Staff'', and TS 5.3, ''Plant Staff Qualifications'', requirements for shift technical advisor (STA) qualifications. The proposed changes will specify that personnel who perform the function of STA shall meet the qualification requirements of the Commission Policy Statement on Engineering Expertise on Shift, published in the **Federal Register** on October 28, 1985 (50 FR 43621). This change will allow qualified personnel to perform the function of STA without

also holding a senior reactor operator (SRO) license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes to add a new sentence to Technical Specification 5.2.2 specifying that personnel who perform the function of shift technical advisor shall meet the qualification requirements of the Commission Policy Statement on Engineering Expertise on Shift and remove shift technical advisor qualification requirements from Technical Specification 5.3.1. This change will allow qualified personnel to perform the function of shift technical advisor without also holding a senior reactor operator license.

The proposed changes are administrative changes to Technical Specifications Chapter 5, the administrative chapter of the Technical Specifications. Shift technical advisors perform the function of on-shift technical advisor to the shift supervisor and do not operate the plant. Therefore, the changes proposed in this license amendment request do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes to add a new sentence to Technical Specification 5.2.2 specifying that personnel who perform the function of shift technical advisor shall meet the qualification requirements of the Commission Policy Statement on Engineering Expertise on Shift and remove shift technical advisor qualification requirements from Technical Specification 5.3.1. This change will allow qualified personnel to perform the function of shift technical advisor without also holding a senior reactor operator license.

The Technical Specification changes proposed in this license amendment are administrative, do not change the manner in which the plant is operated, and do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes to add a new sentence to Technical Specification 5.2.2 specifying that personnel who perform the function of shift technical advisor shall meet the qualification requirements of the Commission Policy Statement on Engineering Expertise on Shift and remove shift technical advisor qualification requirements from Technical Specification 5.3.1. This change will allow qualified personnel to perform the function of shift technical advisor without also holding a senior reactor operator license.

The proposed changes are administrative changes to Technical Specifications Chapter 5, the administrative chapter of the Technical Specifications. Shift technical advisors perform the function of on-shift technical advisor to the shift supervisor and do not operate the plant. Thus, the Technical Specification changes proposed in this license amendment request do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: January 18, 2007.

Brief description of amendments: The amendments requested would revise Technical Specifications (TS) requirement 3.8.1, ''AC Sources—Operating,'' Extension of Completion Times for Offsite Circuits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification (TS) Completion Time (CT) extension does not significantly increase the probability of occurrence of a previously evaluated accident because the startup transformers (STs) are not initiators of previously evaluated accidents involving a loss of offsite power (LOOP). The proposed changes to the TS Required Actions CTs do not affect any of the assumptions used in the deterministic or the PSA [probabilistic safety assessment] analysis relative to LOOP initiating event frequency. Implementation of the proposed changes does not result in a risk significant impact. The onsite AC [alternating current] power sources will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the increase in core damage frequency (CDF) is less than 1E–06 per year and the increase in large early release frequency (LERF) is less than 1E–07 per year. In addition, for the CT changes, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5E–07 and 5E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the onsite AC power sources will continue to perform their functions with high reliability as originally assumed and the increase in risk as measured by ΔCDF, ΔLERF, ICCDP, and ICLERP risk metrics is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

The proposed TS CT extension will continue to provide assurance that the sources of power to 6.9 kV [kilovolts] AC buses perform their function when called upon. Extending the TS CT to 30 days does not affect the design of the STs, the operational characteristics of the STs, the interfaces between the STs and other plant systems, the function, or the reliability of the STs. Thus, the STs will be capable of performing their accident mitigation functions and there is no impact to the radiological consequences of any accident analysis.

The Configuration Risk Management Program (CRMP) in TS 5.5.18 is an administrative program that assesses risk based on plant status. The risk-informed CT will be implemented consistent with the CRMP and approved plant procedures. When utilizing the 30-day extension, requirements of the CRMP per TS 5.5.18 call for the consideration of other measures to mitigate the consequences of an accident occurring while a[n] ST is inoperable. Furthermore, administrative controls will be applied when exercising the 30-day CT extension and are adequate to maintain defense-in-depth and sufficient safety margins.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in a change in the manner in which the electrical distribution subsystems provide plant protection. There [are] no design changes associated with the proposed changes. The changes to the CT do not change any existing accident scenarios, nor create any new or different accident scenarios.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter any of the assumptions made in the safety analysis. The changes to the CT do not affect the accident analysis directly; the CT is strictly tied to the PRA [probabilistic risk assessment] and the risk associated with the occurrence of a low-probability event during the limited time the component is unavailable.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. Neither the safety analyses nor the safety analysis acceptance criteria are impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the current design basis. The proposed activities only involve changes to certain TS CTs.

The proposed change does not involve a change to the plant design or operation and thus does not affect the design of the STs, the operation characteristics of the STs, the interfaces between the STs and other plant systems, or the function or reliability of the STs. Because the STs' performance and reliability will continue to be ensured by the proposed TS change, the proposed changes do not result in a reduction in the margin of safety.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: David Terao.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 19, 2006.

Brief description of amendments: The amendments requested would revise Technical Specification (TS) requirement 5.5.16, ''Containment Leakage Rate Testing Program,'' for consistency with the requirements of paragraph 50.55a(g)(4) of Title 10 of the *Code of Federal Regulations* (10 CFR) for components classified as Code Class CC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do[es] the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a(g)(4) for components classified as Code Class CC.

The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the containment for the purpose of the Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The frequency of visual examinations of the concrete surfaces of the containment and the mode of operation during which those examinations are performed has no relationship to or adverse impact on the probability of any of the initiating events assumed in the accident analyses. The proposed change would allow visual examinations that are performed pursuant to NRC approved [American Society of Mechanical Engineers] (ASME) Section XI Code requirements (except where relief has been granted by the NRC) to meet the intent of visual examinations required by Regulatory Guide 1.163, without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the Code required visual examinations. As such, the safety function of the containment as a fission product barrier is maintained.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. It does not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do[es] the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a(g)(4) for components classified as Code Class CC.

The change affects the frequency of visual examinations that will be performed for the concrete surfaces containments. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The proposed change does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do[es] the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the Improved Standard Technical Specification Administrative Controls program requirements for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a(g)(4) for components classified as Code Class CC.

The change affects the frequency of visual examinations that will be performed for the concrete surfaces containments. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The safety function of the containment as a fission product barrier will be maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Thomas Hiltz.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in

10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 28, 2005, as supplemented by letters dated November 2, 2005, January 24, February 2, March 16, March 23, and March 28, 2007.

Brief description of amendment: The amendment revises the Oyster Creek Licensing Basis in the area of radiological dose analyses for design-basis accidents using the alternative source terms depicted in Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors.'' Additionally, the amendment revises the Oyster Creek Technical Specifications (TSs) consistent with the amended design-basis.

Date of Issuance: April 26, 2007.

Effective date: As of the date of Issuance to be implemented within 60 days.

Amendment No.: 262.

Facility Operating License No. DPR–16: The amendment revised the TSs.

Date of initial notice in **Federal Register**: May 10, 2005 (70 FR 24646). The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission (NRC) staff's original proposed to significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 26, 2007.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina

Date of application for amendment: June 1, 2006, as supplemented by letters dated November 20, 2006, and February 22, 2007.

Brief description of amendment: The amendment revises Surveillance Requirement 3.5.2 in the HBRSEP2 Technical Specifications.

Date of issuance: April 4, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 213.

Renewed Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: December 19, 2006 (71 FR 75992). The supplemental letters provided additional information that was within the scope of the original notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 2007.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: November 27, 2006.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.5.9 to relocate the specific American Society of Testing and Materials (ASTM) Standard from the Administrative Controls Section of TS to a licensee-controlled document. Also, the revision to TS 5.5.9 allows the performance of an alternate water and sediment content test to establish the acceptability of new fuel oil prior to addition to the storage tank has been added to the clear and bright test.

Date of issuance: April 12, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 174.

Facility Operating License No. NPF–43: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register***: January 3, 2007 (72 FR 149).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 2007.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: October 13, 2006.

Brief description of amendment: The amendment revised Facility Operating License No. NPF–58 by deleting License Condition 2.F, which specifies reporting of violations of Operating License Section 2.C, and eliminates Technical Specification 5.6.6, which contains a reporting condition similar to Operating License Section 2.C.(6).

Date of issuance: April 19, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 140.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register***: November 21, 2006 (71 FR 67394).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2007.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 31, 2006, as supplemented on December 15, 2006, and March 1 and April 4, 2007.

Brief description of amendment: The amendment conforms the license to reflect the transfer of Renewed Facility Operating License No. DPR–20 to Entergy Nuclear Palisades, LLC, as

owner, and Entergy Nuclear Operations, Inc., as operator, as approved by Order of the Commission dated April 6, 2007, and as revised on April 10, 2007.

Date of issuance: April 11, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 224.

Facility Operating License No. DPR–20: Amendment revised the Renewed Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: November 16, 2006 (71 FR 66805).

The December 15, 2006, and March 1 and April 4, 2007, supplemental letters contained clarifying information and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 2007, as revised on April 10, 2007.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: December 20, 2006.

Brief description of amendment: The amendment revises License Condition 2.B.3(c) to allow the receipt, possession, and use of byproduct, source, or special nuclear material without restriction to amount or atomic number, for sample analysis or instrument calibration or associated with radioactive apparatus or components.

Date of issuance: April 17, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 39.

Facility Operating License No. DPR–7: This amendment revises the license.

Date of initial notice in ***Federal Register***: February 13, 2007 (72 FR 6788).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 2007.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 29, 2006.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.4.1, ''Reactor Coolant System (RCS) Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,'' and TS 5.6.5, ''Core Operating Limits Report (COLR).'' This amendment relocated the RCS DNB parameters for pressurizer pressure and RCS average temperature to the COLR. In addition, TS 5.6.5 was revised to add topical reports WCAP–8567–P–A, ''Improved Thermal Design Procedure,'' and WCAP–11596–P–A, ''Qualification of the PHOENIX–P/ANC Nuclear Design System for Pressurized Water Reactor Cores.''

Date of issuance: April 17, 2007.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1—195; Unit 2—196.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: February 13, 2007 (72 FR 6786).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 17, 2007.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 1, 2006, as supplemented October 9, 2006, and February 21, 2007.

Brief description of amendments: The amendments relocate the main steamline discharge radiation monitors (R46) from Technical Specification (TS) 3/4.3.3.1, ''Radiation Monitoring Instrumentation'' to TS 3/4.3.3.7, ''Accident Monitoring Instrumentation.'' In addition, the amendments modify TS definition 1.31, ''Source Check.''

Date of issuance: April 19, 2007.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment Nos.: 280 and 263.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs and the License.

Date of initial notice in ***Federal Register***: July 18, 2006 (71 FR 40753). The supplements dated October 9, 2006, and February 21, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on July 18, 2006 (71 FR 40753).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 2007.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 7, 2006.

Brief description of amendments: The amendments delete the Technical Specification (TS) requirements related to hydrogen recombiners and hydrogen analyzers. The changes support the implementation of a revision to Title 10 of the *Code of Federal Regulations*, Section 50.44, ''Combustible gas control for nuclear power reactors'' that became effective on October 16, 2003. A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on September 25, 2003 (68 FR 55416).

Date of issuance: April 19, 2007.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 281 and 264.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs and the License.

Date of initial notice in ***Federal Register***: August 29, 2006 (71 FR 51231).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 2007.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: December 21, 2006.

Description of amendment request: The amendments revised Technical Specification (TS) Limiting Condition for Operation 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than 212 °F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with inservice leak or hydrostatic testing, while considering operational conditions to be in Mode 4.

Date of issuance: April 16, 2007.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment Nos.: 270, 299 & 258.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the TSs.

*Date of initial notice in **Federal Register***: February 13, 2007 (72 FR 6791).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 2007.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 15, 2006.

Brief description of amendment: The amendment revised the Technical Specifications to adopt NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–372, ''Addition of LCO [Limiting Condition for Operation] 3.0.8, Inoperability of Snubbers.'' The amendment added (1) a new LCO 3.0.8 addressing situations where one or more required snubbers are unable to perform their associated support function(s) and (2) a reference to LCO 3.0.8 in LCO 3.0.1, which describes when LCOs shall be met.

Date of issuance: April 17, 2007.

Effective date: As of its date of issuance and shall be implemented within 90 days of the date of issuance.

Amendment No.: 173.

Facility Operating License No. NPF–42: The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register***: January 3, 2007 (72 FR 154).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 2007.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the

NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1]

Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. *Environmental*—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of application for amendment: April 6, 2007 (TS–460–T).

Brief description of amendment: This amendment approves a one-time extension of the Completion Time for emergency diesel generator (EDG) '3D' from 7 days to 14 days. The extension allows continued operation while repairs, post-maintenance testing, and surveillance testing of the subject EDG are completed.

Date of issuance: April 6, 2007.

Effective date: April 6, 2007, to be implemented within 30 days.

Amendment No.: 257.

Renewed Facility Operating License No. DPR–68: Amendment revises the Technical Specifications.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration, are contained in a Safety Evaluation dated April 6, 2007.

Public comments requested as to proposed no significant hazards consideration: No.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protection order.

NRC Section Chief: Thomas H. Boyce.

Dated at Rockville, Maryland, this 1st day of May 2007.

For the Nuclear Regulatory Commission.

Harold K. Chernoff,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–8679 Filed 5–7–07; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Reconsideration of Initial Determinations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act, a collection of information under its regulation on Rules for Administrative Review of Agency Decisions. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 9, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Comments received will be posted to *http:www.pbgc.gov.*

Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) PBGC's regulation on Administrative Appeals may be accessed on PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Donald McCabe, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by the PBGC and the procedures for requesting and obtaining review of initial determinations through reconsideration or appeal. Subpart A of the regulation specifies which initial determinations are subject to reconsideration. Subpart C prescribes rules on who may request reconsideration, when to make such a request, where to submit it, form and content of reconsideration requests, and other matters relating to reconsiderations.

Any person aggrieved by an initial determination of PBGC under § 4003.1(b)(1) (determinations that a plan is covered by section 4021 of ERISA), § 4003.1(b)(2) (determinations concerning premiums, interest, and late payment penalties under section 4007 of ERISA), § 4003.1(b)(3) (determinations concerning voluntary terminations), or § 4003.1(b)(4) (determinations concerning allocation of assets under section 4044 of ERISA) may request reconsideration of the initial determination. Requests for reconsideration must be in writing, be clearly designated as requests for reconsideration, contain a statement of the grounds for reconsideration and the relief sought, and contain or reference all pertinent information.

PBGC intends to request that OMB approve this collection of information for three years. 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.

PBGC estimates that an average of 940 appellants per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is 0.35 hours and $545 per person, with an average total annual burden of 329 hours and $512,219.

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or
- Other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, this 2nd day of May 2007.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E7–8708 Filed 5–7–07; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2823, Designation of Beneficiary: Federal Employees' Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the

burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 47,000 SF 2823 forms are completed annually by annuitants and 1,000 forms are completed by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 12,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Christopher N. Meuchner, Life Insurance & Long Term Care Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2H22, Washington, DC 20415–3661.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–8742 Filed 5–7–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 92–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 92–22, Annuity Supplement Earnings Report, is used each year to obtain the earned income of each Federal Employees Retirement System (FERS) annuitant receiving an annuity supplement. The annuity supplement is paid to eligible FERS annuitants who are not retired on disability and are not yet age 62. The supplement approximates the portion of a full career Social Security benefit earned while under FERS and ends at age 62. Like Social Security benefits, the annuity supplement is subject to an earnings limitation.

Approximately 700 RI 92–22 forms are completed annually. Each form requires approximately 15 minutes to complete. The annual estimated burden is 175 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540; and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–8745 Filed 5–7–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Extension, Without Change, of a Currently Approved Collection: RI 25–51

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR part 1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for extension, without change, of a currently approved collection. RI 25–51, Civil Service Retirement System (CSRS) Survivor Annuitant Express Pay Application for Death Benefits, will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 34,800 RI 25–51 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 17,400 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION, CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–8752 Filed 5–7–07; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 19h–1, SEC File No. 270–247, OMB Control No. 3235–0259.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') intends to submit to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 19h–1 (17 CFR 240.19h–1): SRO notification of admission and/or continuance despite statutory disqualification.

Rule 19h–1 (''Rule'') under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) prescribes the form and content of notices and applications by self-regulatory organizations (''SROs'') regarding proposed admissions to, or continuances in, membership, participation or association with a member of any person subject to a statutory disqualification.

The Commission uses the information provided in the submissions filed pursuant to Rule 19h–1 to review decisions by SROs to permit the entry into or continuance in the securities business of persons who have committed serious misconduct. The filings submitted pursuant to the Rule also permit inclusion of an application to the Commission for consent to associate with a member of an SRO notwithstanding a Commission order barring such association.

The Commission reviews filings made pursuant to the Rule to ascertain whether it is in the public interest to permit the employment in the securities business of persons subject to statutory disqualification. The filings contain information that is essential to the staff's review and ultimate determination on whether an association or employment is in the public interest and consistent with investor protection.

It is estimated that approximately 5 respondents will make submissions pursuant to this rule annually and that they each will make 5 responses, for a total burden of 200 hours, based upon past submissions (25 × 8 = 200). The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1 is 8 hours. The average cost per hour for completion of a submission is approximately $101. Therefore, the total cost of compliance for the respondents is $20,200. (25 responses × 8 hours per response × $101 per hour).

Written 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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 60 days of this notice.

Dated: April 30, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8737 Filed 5–7–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55685; File No. SR–Amex–2007–41]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Continuation of a Quote Assist Feature in the ANTE System on a Pilot Program Basis

April 30, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2006, 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 substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 958A—ANTE (e) (the ''Rule'') to extend until April 30, 2008, its pilot program implementing a quote-assist feature in the Exchange's ANTE system (''Pilot Program''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and (*http://www.amex.com/*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Rule currently requires all option specialists to execute or display customer limit orders that improve the bid or offer by price or size immediately upon receipt, unless one of the exceptions set forth in the Rule applies. ''Immediately upon receipt'' is defined in the Rule ''as soon as practicable which shall mean, under normal market conditions, no later than 30 seconds after receipt''.[3]

In order to assist the specialists in complying with the Rule as described above, the ANTE System provides specialists with an automated quote assist feature on a pilot program basis.[4]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51062 (January 21, 2005) 70 FR 4163 (January 28, 2005).

[4] *See* Securities Exchange Act Release Nos. 49747 (May 20, 2004), 69 FR 30344, 30347 (May 27, 2004) (approving implementation of the ANTE system,

The quote assist feature automatically displays eligible limit orders within a configurable time that can be set on a class-by-class basis by the Exchange. The time frame within which limit orders must be addressed, a maximum of 30 seconds under the Rule, may be set to a shorter time period by the Exchange. The specialist maintaining the quote assist feature may then use the feature to automatically display orders within a shorter time period than the time period set by the Exchange.

While all customer limit orders are expected to be displayed immediately, the quote assist feature can be set to automatically display limit orders at or close to the end of the 30-second time frame or within any other shorter time frame established by the Exchange. In instances where the specialist has not addressed the order within the applicable 30-second period, the quote assist feature will automatically display the eligible customer limit order in the limit order book at or close to the end of that period. The quote assist feature helps to ensure that eligible customer limit orders are displayed within the required time period then in effect. Rule 958A—ANTE (e)(4) currently requires the specialist to maintain and keep active the limit order quote assist feature. The specialist may establish the time frame within which the quote assist feature displays eligible customer limit orders, which time frame does not exceed the customer limit order display requirement set forth in the Rule. The specialist may deactivate the quote assist feature provided Floor Official approval is obtained. The specialist must obtain Floor Official approval as soon as practicable but in no event later than three minutes after deactivation. If the specialist does not receive approval within three minutes after deactivation, the Exchange will review the matter as a regulatory issue. Floor Officials will grant approval only in instances when there is an unusual influx of orders or movement of the underlying that would result in gap pricing or other unusual circumstances. The Exchange will document all instances where a Floor Official has granted approval.

The Exchange notes that the quote assist feature does not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating the Rule. However, brief or intermittent reliance on the quote assist feature by a specialist during an unexpected surge in trading activity in an option class would not violate the Rule if used when the specialist is not physically able to address all the eligible limit orders within 30 seconds. The Exchange has issued a regulatory notice discussing excessive reliance on the quote assist feature.

The Exchange will continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit orders within the time period prescribed by Exchange rules. The Exchange commits to conduct surveillance designed to detect whether specialists as a matter of course rely on the quote-assist feature to display all eligible limit orders. A practice of excessive reliance upon the quote assist feature will be reviewed by the Division of Regulation and Compliance as a possible violation of the Rule. The Exchange runs its limit order display exception report at various display intervals in an attempt to detect a pattern suggestive of undue reliance on the quote assist feature. The Exchange reports to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on the quote assist feature by specialists.

The Exchange now proposes to continue the quote assist feature on a pilot program basis from April 30, 2007 until April 30, 2008.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–41 and should be submitted on or before May 29, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the 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

including the quote assist feature on a pilot basis); 51955 (June 30, 2005), 70 FR 39812 (July 11, 2005) (extending the Pilot Program until April 30, 2006); and 53950 (June 6, 2006) 71 FR 34401 (June 14, 2006) (extending the Pilot Program until April 30, 2007).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of the Exchange 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 believes that the quote assist feature should help to ensure that eligible customer limit orders are displayed within the required time period. The Commission notes that the Exchange represents that it will continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit orders within the time period prescribed by Exchange rules, and that excessive reliance upon the quote assist feature will be reviewed by the Exchange as a possible violation of the Rule.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission believes that granting accelerated approval will allow the Exchange to continue to operate the Pilot Program without interruption. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the proposal prior to the thirtieth day after publication of the notice of the filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2007–41) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8734 Filed 5–7–07; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving the proposed rule, the Commission has considered the rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55684; File No. SR–BSE–2007–17]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the $1 Strike Pilot Program for an Additional Year

April 30, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by BSE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to extend its $1 strike pilot program (''Pilot Program'') for an additional year until June 5, 2008. The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and *http://www.bostonstock.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program[5] under the Rules of the Boston Options Exchange (''BOX'') for an additional year. The Pilot Program allows the Boston Options Exchange Regulation (''BOXR''), the department of BSE with the delegated regulatory authority over BOX, to list options on a pilot basis on up to five selected underlying equities trading below $20 at $1 strike price intervals and to list $1 strike prices on any equity option included in the $1 strike price pilot program of any other options exchange until June 5, 2007. The proposed rule change retains the text of Supplementary Material .02 to Section 6 of Chapter IV of the BOX Rules, as currently established on a pilot basis, and seeks to extend the operation of the Pilot Program for another year until June 5, 2008.

Chapter IV, Section 6 of the BOX Rules establishes guidelines regarding the addition of options series for trading on BOX. Under the Pilot Program, in order to be eligible for selection into the Pilot Program, the underlying stock must close below $20 on its primary market on the previous trading day. If selected for the Pilot Program, BOXR may list strike prices at $1 intervals from $3 to $20, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price on its primary market on the previous day. BOXR also may list $1 strikes on any other options class designated by another options exchange that employs a similar pilot program under its rules. BOXR may not list long-term option series (''LEAPS''®) at $1 strike price intervals for any class selected for the Pilot Program. BOXR also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Pilot Program was initially proposed in reaction to the general decrease in stock prices and the proliferation of stocks trading below $20, including some of the most widely held and actively traded equity securities listed on the New York Stock

[5] BSE implemented the Pilot Program in February 2004 and extended it three times through June 5, 2007. *See* Securities Exchange Act Release Nos. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (SR–BSE–2004–01) (establishing the Pilot Program); 49806 (June 4, 2004), 69 FR 32640 (June 10, 2004) (SR–BSE–2004–22); 51778 (June 2, 2005), 70 FR 33562 (June 8, 2005) (SR–BSE–2005–18); and 53855 (May 24, 2006), 71 FR 30973 (May 31, 2006) (SR–BSE–2006–19).

Exchange, the American Stock Exchange, and Nasdaq. BSE notes that many of these stocks are still trading below $20, including, for example, Oracle, Micron Technology, EMC Corp, and Motorola.

When a stock underlying an option trades at a lower price, it requires a larger percentage gain in the price of the stock for an option to become in-the-money. For example, if a stock trades at $10, an investor that wants to purchase a slightly out-of-the-money call option would have to buy the $12.50 call. At these levels, the stock price would need to increase by 25% to reach in-the-money status. BSE notes that a 25% or higher gain in the price of the underlying stock is especially large given the lessened degree of volatility that recently has accompanied many stocks and options. According to BSE, listing additional strike prices on these classes has allowed BOX Participants to provide their customers with greater trading flexibility in achieving their investment strategies. In further support of this proposed rule change, the Exchange submitted to the Commission a Pilot Program Report, attached as Exhibit 3 to the filing, offering detailed data from and analysis of the Pilot Program.

2. Statutory Basis

The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the Pilot Program for another year, without adversely affecting systems capacity. The proposed rule change is designed to provide investors with greater trading opportunities, and the flexibility and ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9][10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2007–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2007–17. 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 will also be available for inspection and copying at the principal office of BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BSE–2007–17 and should be submitted on or before May 29, 2007.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BSE has satisfied the five-day pre-filing requirement. In the event that BSE proposes to: (1) Extend the Pilot Program beyond June 5, 2008; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, BSE will submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. BSE will file any proposal to expand or seek permanent approval of the Pilot Program and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report will cover the entire time the Pilot Program was in effect and will include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options BSE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of BSE's, the Options Price Reporting Authority's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how BSE addressed them; (6) any complaints that BSE received during the operation of the Pilot Program and how BSE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

[10] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8733 Filed 5–7–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55679; File No. SR–NYSEArca–2007–35]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

April 27, 2007.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 3, 2007, NYSE Arca, Inc. (the ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca is proposing to amend its Schedule of Fees and Charges for Exchange Services (''Schedule''). The text of the proposed rule change is available at *http://www.nysearca.com,* at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the existing NYSE Arca Rate Schedule by revising or eliminating certain fees and adding clarifying language to either footnotes or explanatory text, associated with certain fees. The Exchange also proposes making minor technical changes to the Schedule. A brief description of each proposed change is shown below.

OTP Trading Participant Rights

NYSE Arca Market Makers pay a fee of $4,000 per month for each Options Trading Permit (OTP) used. The fee is presently capped at $16,000 per month, which represents four OTPs. Pursuant to NYSEArca Rule 6.35(d)(4), a Market Maker with four OTPs is permitted to trade all issues on the Exchange. Because of this provision, there would never be an occasion for a Market Maker to need more than four OTPs, thereby negating any need for a fee cap. As a result, the Exchange proposes to eliminate the $16,000 fee cap from the Schedule.

LMM Options Issue Relinquishment Fee

This fee was initially implemented to help offset the costs incurred by the Exchange when a Lead Market Maker (''LMM'') relinquished an allocated option issue. Previously, the relinquishment process involved administrative and technological changes, both of which were mostly manual processes. Much of the process has now been automated and the associated cost has been significantly reduced. Accordingly, the Exchange proposes eliminating the Issue Relinquishment Fee in its entirety.

DEA Fee

The Exchange charges a one time $75 registration fee, for new applicants, when the Exchange also acts as the Designated Examining Authority. This fee helps to offset administrative expenses involved in processing new applications. Much of the processing is now done over the NASD Central Registration Depository (''CRD''). Included in the fees that NASD collects on behalf of the Exchange, is a $55 assessment for new applicants. The Exchange believes that these fees are duplicitous and as such, will eliminate the $75 one time registration fee.

Weekly Bulletin Subscription Fee

NYSE Arca distributes a Weekly Bulletin (''Bulletin'') to OTP Holders and OTP Firms in order to provide them with regulatory bulletins, rule adoption notices, and other official communications. The Bulletin has been available either electronically or via U.S. Mail. To offset the cost of postage and handling, the Exchange charges a $200 per year subscription fee to anyone electing to receive the Bulletin via regular mail.

NYSE Arca Rule 2.25 requires that Each OTP Holder and OTP Firm must maintain with NYSE Arca an electronic mail account for communication with the NYSE Arca. Presently, all OTP Holders and OTP Firms receive the Bulletin via e-mail subscriptions. As a result, the Exchange will no longer offer the option of receiving the Bulletin via regular mail. Therefore, the Exchange proposes eliminating the Subscription Fee.

Transaction Fees

The Exchange proposes making minor changes to the Order Types included in the Transaction Fee section of the Schedule.

Orders executed on behalf of registered Broker Dealers (''BD''), or Broker Dealer Firms, are presently assessed the ''BD rate.'' In order to avoid any misunderstanding and to clarify that the ''BD rate'' is applicable to the BD Firms as well as the BDs, the BD Electronic rate and BD Manual rate will now read ''Broker Dealer & Firm Electronic'' and ''Broker Dealer & Firm Manual.''

Presently, the ''Firm rate'' applies to any transaction involving a proprietary trading account of an OTP Firm that has a customer of that OTP Firm on the contra side of the transaction. This explanation presently appears on the Schedule as a footnote to the Firm fee. This practice is generally referred to as ''facilitating'' an order. In order to better explain that the ''Firm rate'' is only applicable when a firm facilitates their customer's order, the Schedule will now read ''Firm Facilitation.''

Marketing Charge—QQQQ

The Exchange assesses Market Makers a Marketing Charge on certain transactions. The Standard and Poor's Depository Receipts (QQQQ) carry a $1.00 per contract charge. Marketing Charges are not assessed on issues that

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

trade as part of the Penny Pilot. QQQQ has now been included in the Penny Pilot and therefore the Exchange will no longer assess a Marketing Charge on any trades in this issue. The Exchange also proposes making minor technical changes to this section of the Schedule with this filing.

Royalty Fees

In an effort to reduce costs associated with trading on NYSE Arca, the Exchange proposes to eliminate certain Royalty Fees. The Exchange proposes to eliminate the $0.10 per contract Royalty Fee for options traded on the following ETFs; the Financial Select Sector SPDR (XLF), the Technology Select Sector SPDR (XLK), and the Healthcare Select Sector SPRD (XLV). By eliminating these fees, the Exchange hopes to attract additional order flow and encourage more trading by market participants.

Vendor Equipment Room Usage Fee

This fee covers the use of server cabinets in the vendor equipment room located adjacent to the trading floor. This fee will now be called the Vendor Equipment Room Cabinet Fee, and the footnote associate with the fee will now be moved into the body of the Schedule. These minor changes simply serve to offer clarity as to how this fee is assessed, and makes no change to the fee itself.

Technical and Formatting Changes

The Exchange proposes making minor changes to the schedule in order correct certain typographical and grammatical errors and to make certain formatting changes. These changes will have no effect on existing fees or the application of the existing fees.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) [6] of the Act, in general, and Section 6(b)(4),[7] in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act [8] and Rule 19b–4(f)(2) thereunder [9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to file Number SR–NYSEArca–2007–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also 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–NYSEArca–2007–35 and should be submitted by May 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8732 Filed 5–7–07; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55686; File No. SR–OCC–2006–21]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Membership Requirements

May 1, 2007.

I. Introduction

On November 15, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder [2] a proposed rule change to modify certain OCC By-Laws and Rules relating to membership requirements. The proposed rule change was published for comment in the **Federal Register** on January 12, 2007.[3] No comment letters were received. This order approves the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 55047 (Jan. 5, 2007), 72 FR 1571.

II. Description of the Proposal

1. Interpretation and Policy .03

Prior to this rule change, Interpretation and Policy .03 to Article V, Section 1, of OCC's By-Laws required applicants for membership to employ two key operations employees on a full-time basis. This requirement was intended to ensure that an applicant maintains sufficient staff to fulfill its obligations as a clearing member. However, several recent applicants for clearing membership have had difficulty meeting this requirement because their entire staff was employed by an affiliate of the applicant (*i.e.*, a parent or related organization) rather than by the applicant itself. While these applicants entered into employee leasing arrangements in order to comply with OCC's policy, OCC decided to reevaluate the policy in light of the fact that it had proved burdensome to a number of applicants.

OCC understands that it is not uncommon for some entities of an affiliated corporate group to outsource certain or all functions to another entity of the corporate group and let the latter be the sole employer of the people who perform those functions. In situations of that nature, OCC concluded that there is not the same reason to be concerned about whether the applicant will have adequate staffing as in cases where the applicant relies on an unaffiliated third party for staffing. OCC therefore is modifying its policy in order to provide greater flexibility to recognize this alternative employment structure by amending Interpretation and Policy .03 to Article V, Section 1, to permit the Membership/Risk Committee (''Committee'') to waive the requirement that an applicant employ two key operations employees on a full-time basis if the daily operations of the applicant are conducted by staff employed on a full-time basis by an entity affiliated with such applicant. OCC believes that the Committee's authority to waive such requirement is consistent with its existing authority to waive the requirement that an applicant employ at least one full-time person who is registered as a ''Limited Principal—Financial and Operations'' or comparable registration requirement, as applicable.

2. Rule 309

OCC is also amending Rule 309 by adding new paragraph (f) to clarify that if an operationally capable clearing member proposes to become a managed clearing member (*i.e.*, outsource certain of its obligations as a clearing member to another clearing member [''managing clearing member'']), the applicant must obtain prior approval from the Committee. Prior to this rule change, Interpretation and Policy .04 to Rule 309 primarily contemplated the use of facilities management agreements by applicants for membership rather than by existing clearing members. Nonetheless, OCC has always interpreted its By-Laws and Rules as requiring prior Committee review and approval of all facilities management agreements, including those proposed to be entered into by operationally capable clearing members. The amendment to Rule 309 makes this interpretation explicit.

3. Rule 901

OCC is amending Rule 901 to provide that a clearing member's appointment of another clearing member or CDS Clearing and Depository Services Inc. (''CDS'')[4] for purposes of effecting settlements of exercised or matured cleared securities may not be terminated until after the 30th calendar day following notice to OCC of such termination.[5] Prior to this rule change, clearing members were required to provide three business days notice of terminating such appointments. However, OCC concluded that three business days was insufficient time for OCC to determine whether or not the clearing member has made appropriate alternative settlement arrangements. Accordingly, OCC is changing the notice period to be consistent with the notice period required to advise OCC of the termination of a facilities management agreement.[6]

III. Discussion

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 registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),[7] which, among other things, requires the rules of a clearing agency to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. Although OCC is giving the Membership/Risk Committee the ability to waive the requirement that an applicant employ two key operations employees on a full-time basis, the revised requirement that allows an applicant to have full-time operational staff employed by an affiliate of the applicant should provide OCC with the practical flexibility to permit such arrangements and still have reasonable assurance that its members are operationally sound. Moreover, specifying that a clearing member's appointment of another clearing entity to effect settlement on its behalf can not be terminated until after the 30th calendar day following notice to OCC of such termination should provide OCC with an appropriate amount of time in which to determine that the clearing member has made alternative settlement arrangements.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2006–21) be, and hereby is, approved.[9]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8735 Filed 5–7–07; 8:45 am]

BILLING CODE 8010–01–P

[4] CDS is the successor organization to Canadian Depository for Securities Ltd. OCC's By-Law definition of CDS is being amended to reflect this organizational change.

[5] OCC surveyed appointed clearing members that effect NSCC settlements for nonaffiliated clearing members and CDS to ascertain their views regarding the proposed change in the notice period for terminating such appointments. There were no objections to the proposed change.

[6] Conforming changes have been made to the related appointment forms, which are attached as Exhibits 5A and 5B to the proposed rule filing.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1.

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55689; File No. SR–Phlx–2007–36]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Quoting Obligations in Long Term Options

May 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Phlx. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt, on a permanent basis, Phlx Rule 1014(b)(ii)(D)(4), which currently states that Streaming Quote Traders (''SQTs''),[5] Remote Streaming Quote Traders (''RSQTs''),[6] and SQTs and RSQTs that receive Directed Orders[7] (''DSQTs'' and ''DRSQTs'' respectively) are deemed not to be assigned in any option series until the time to expiration for such series is less than nine months. Accordingly, the obligations to quote continuous, two-sided markets described in Phlx Rule 1014(b)(ii)(D) currently do not apply to SQTs, RSQTs, DSQTs and DRSQTs respecting series with an expiration of nine months or greater. The Exchange originally adopted the rule on a six-month pilot basis (the ''pilot'').[8] The pilot was scheduled to expire on April 24, 2007.

The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room, and *http://www.phlx.com*.

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 Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt Phlx Rule 1014(b)(ii)(D)(4) on a permanent basis in order to continue to mitigate the Exchange's quote traffic by relaxing the quoting obligations applicable to SQTs, RSQTs, DSQTs and DRSQTs, thereby reducing the number of quotations required to be submitted on the Exchange.

The pilot is part of an overall strategy to mitigate options quote traffic on the Exchange, under which SQTs, RSQTs, DSQTs and DRSQTs are deemed not to be assigned in any option series until the time to expiration for such series is less than nine months. The effect of this is to relax these traders quoting obligations, and ultimately the number of quotes they are required to submit, because the continuous quoting obligations described in Phlx Rule 1014(b)(ii)(D)(1) apply only to those options in which they are assigned.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by relaxing the quoting requirements in option series with an expiration greater than nine months, thereby reducing the number of options quotations required to be submitted, which should enable the Exchange to mitigate quote traffic.

B. Self–Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self–Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder,[12] because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30–days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[14] The Exchange has requested that the Commission waive the 30–day operative delay. The Commission believes that waiving the 30–day operative delay is consistent with the protection of investors and the public interest because such waiver will ensure continuity of the Exchange's rules. Furthermore, the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(A).

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(B).

[7] The term ''Directed Order'' means any customer order (other than a stop or stop-limit order as defined in Phlx Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider. *See* Phlx Rule 1080(l)(i)(A).

[8] *See* Securities Exchange Act Release No. 54648 (October 24, 2006), 71 FR 63375 (October 30, 2006) (SR–Phlx–2006–62).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied the five-day pre-filing requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

does not present any novel regulatory issues. The Commission notes that this proposal is consistent with the approach in current Phlx Rule 1012, Commentary .03, which states that strike price interval, bid/ask differential and continuity rules will not apply to such long term option series until the time to expiration is less than nine months.[15] For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e–mail to *rule–comments@sec.gov.* Please include File Number SR–Phlx–2007–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–36. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–36 and should be submitted on or before May 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8736 Filed 5–7–07; 8:45 am]

BILLING CODE 8010–01–P

[15] *See* Securities Exchange Act Release No. 29103 (April 18, 1991), 56 FR 19132 (April 25, 1991) (SR–Phlx–91–18).

[16] For purposes only of waiving the 30–day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See* 15 U.S.C. 78s(b)(3)(C).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environment Assessment (Final EA) and a Finding of No Significant Impact/Record of Decision (FONSI/ROD) for the Proposed Runway 22R/4L Offset ILS at Detroit Metropolitan Wayne County Airport (DTW) Located in Romulus, Detroit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Final Environmental Assessment and a Finding of No Significant Impact/Record of Decision for the Proposed Runway 22R/4L Offset ILS at Detroit Metropolitan Wayne County Airport.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has prepared a Final Environmental Assessment (Final EA) for the Proposed Runway 22R/4L Offset ILS at Detroit Metropolitan Wayne County Airport and on April 27, 2007, it has approved a Finding of No Significant Impact/Record of Decision (FONSI/ROD) based on this Final EA. The Federal Aviation Administration (FAA) prepared the Final EA in accordance with the National Environmental Policy Act and the Federal Aviation Administration's regulations and guidelines for environmental documents. The Final EA was reviewed and evaluated by the FAA, and was accepted on April 27, 2007 as a Federal document by the FAA's Responsible Federal Official.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Environmental Engineer, Engineering Services, Central Service Area, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone number: 847–294–7494.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has prepare and is making available the Final Environmental Assessment (Final EA) for the following proposed actions at the Detroit Metropolitan Wayne County Airport: The development and use of the offset ILS approach procedures for Runways 22R and 4L, the installation of two (2) offset localizers, the construction of localizer buildings and associated equipment, the construction of access roads, the installation of mulitlateration equipment including 32 precision runway monitors (Precision Runway Monitors), the installation of Airport Surveillance Detection Equipment (ASDE), the reissuance of aeronautical charts with the 22R/4L offset ILS approach information, the issuance of National Airspace System (NAS) Change Proposed (NCP) waivers associated with design and installation of the preceding, the development, issuance, and implementation of Air Traffic procedures, flight check and testing and certification of proposed equipment, and funding for development and implementation of the proposed action.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Orders 1050.1E, ''Environmental Impacts: Policies and Procedures'' and FAA Order 5050.4B, ''NEPA Implementing Instructions for Airport Actions.'' The proposed development action is consistent with the National Airspace System Plan prepared by the U.S. Department of Transportation Federal Aviation Administration (FAA).

A Final Environmental Assessment and the Finding of No Significant Impact/Record of Decision (FONSI/ROD) will be available for public viewing during normal business hours at the following locations:

(1) Romulus Public Library, 11121 Wayne Rd., Romulus, MI 48174, (734) 942–7589.

(2) Wayne City Pubic Library, 3737 S. Wayne Rd., Wayne, MI 48174 (734) 721–7832.

(3) Taylor Community Library, 12303 Pardee Rd., Taylor, MI 48180, (734) 287–4840.

(4) Inkster Public Library, 2005 Inkster Rd., Inkster, MI 48141, (313) 563–2822.

(5) Wayne County Library, 30555 Michigan Ave., Westland, MI 48186 (734) 727–7310.

(6) Federal Aviation Administration Airports District Office, 11677 South Wayne Road, Suite 107, Romulus MI 48174. Advance arrangements need to be made by calling (734) 229–2905, prior to visiting the ADO.

The Final EA and FONSI/ROD will be available through June 30, 2007.

Issued in Des Plaines, Illinois, April 27, 2007.

Rudolf F.L. Harmon,

CSA Technical Operations, Engineering Services, Infrastructure Engineering Center.

[FR Doc. 07–2247 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, July 24, 2007 from 9 a.m. to 4:30 p.m.; Wednesday, July 25, 2007, from 9 a.m. to 4:30 p.m.; and Thursday, July 26, 2007, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the FAA, Bessie Coleman Conference Room, 2nd floor, 800 Independence Avenue, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy B. Kalinowski, Executive Director, ATPAC, System Operations Airspace and Aeronautical Information Management, Room 400E, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9205.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, July 24, 2007 from 9 a.m. to 4:30 p.m.; Wednesday, July 25, 2007, from 9 a.m. to 4:30 p.m.; and Thursday, July 26, 2007, from 9 a.m. to 4:30 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present an oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Ms. Nancy B. Kalinowski no later than July 13, 2007. The next quarterly meeting of the FAA ATPAC is scheduled for October 29–31, 2007, in Washington, DC. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on April 30, 2007.

Nancy B. Kalinowski,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. E7–8724 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28117]

Motor Carrier Safety Advisory Committee Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Motor Carrier Safety Advisory Committee meeting.

SUMMARY: FMCSA announces that the Motor Carrier Safety Advisory Committee (MCSAC) will hold its first planning and organizational meeting. The meeting is open to the public. Establishment of the advisory committee was announced in the **Federal Register** (71 FR 67200), on November 20, 2006.

DATES: The MCSAC meeting will be held from 8 a.m. to 4 p.m. on May 22–23, 2007.

ADDRESSES: The meeting will take place at the Hilton Alexandria Mark Center Hotel, 5000 Seminary Road, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Parks, Acting Chief, Strategic Planning and Program Evaluation Division, Office of Policy Plans and Regulation, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–5370, *FMCSAregs@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) required the Secretary of the U.S. Department of Transportation to establish in FMCSA, a Motor Carrier Safety Advisory Committee. The advisory committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and motor carrier safety regulations. The advisory committee will operate in accordance with the Federal Advisory Committee Act (5 U.S.C. App 2). FMCSA Administrator John H. Hill appointed 15 members to serve on the advisory committee on March 5, 2007.

II. Meeting Participation:

The meeting is open to the public and FMCSA invites participation by all interested parties, including motor carriers, drivers, and representatives of motor carrier associations. During this initial organizational and planning meeting, oral comments will not be taken from the public. Individuals wanting to present written materials to the committee should submit written comments identified by DOT Docket Management System (DMC) Docket Number FMCSA–2007–28117 using any of the following methods:

- Web site: *http://dmses.dot.gov/submit*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Karen Lynch at 202–366–8997.

Issued on: May 3, 2007.

Pamela M. Pelcovits,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. E7–8809 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Volkswagen

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Volkswagen of America, Inc. (VW) in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard,* for the Volkswagen New Beetle vehicle line beginning with model year (MY) 2008. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. VW requested confidential treatment for the information and attachments it submitted in support of its petition. The agency will address VW's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated February 7, 2007, VW requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the Volkswagen New Beetle vehicle line beginning with MY 2008. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one of its vehicle lines per year. VW has petitioned the agency to grant an exemption for its New Beetle vehicle line beginning with MY 2008. In its petition, VW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its New Beetle vehicle line. VW will install its passive antitheft device as standard equipment on the line. Features of the antitheft device will include an immobilizer control unit, a reading coil on the ignition lock, an engine control unit, a transponder-based ignition key, a remote key fob and a visable and audible alarm. VW's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

VW stated that the device is activated by turning the key in the driver's door lock to the lock position or by locking the vehicle with the remote key fob. The New Beetle's immobilizer prevents the vehicle from being operated by unauthorized persons. When the ignition key is turned to the ''on'' position, the key's transporter, the immobilizer control unit, and the engine control unit initiate a complex set of tests to determine if vehicle start-up should be enabled. If the tests fail, the vehicle cannot be started. The vehicle's audible alarm and emergency flasher features are also activated if any of the protected areas of the vehicle are violated. The protected areas include the doors, luggage compartment, engine compartment and the radio.

In its petition, VW further stated it believed its antitheft device has been and will be at least or more effective in reducing and deterring theft than the parts marking requirement. Referencing the data published by NHTSA, VW further stated that the theft rates for the VW Beetle have been significantly below the median.[1] Specifically, theft rates for the MY 2000–2004 New Beetle were 0.9018, 1.1472, 0.9992, 0.5943 and 0.6682 respectively. During these years, the vehicle line was voluntarily equipped with the standard alarm system and immobilizer.

In addressing the specific content requirements of § 543.6, VW provided information on the reliability and durability of its device. To ensure reliability and durability of the device, VW conducted tests based on its own specified standards and believes that the device is reliable and durable since the device complied with its specified requirements for each test. VW provided a detailed list of the tests conducted.

Based on the evidence submitted by VW, the agency believes that the antitheft device for the Volkswagen New Beetle vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that VW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. These conclusions are based on the information VW provided about its device. The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full VW's petition for exemption for the Volkswagen New Beetle vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If VW decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked

[1] For clarification purposes, the agency publishes theft rates based on data provided by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. NHTSA uses NCIC data to calculate theft rates and publishes these rates annually in the **Federal Register**.

according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if VW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 2, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–8730 Filed 5–7–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–939–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–939–86, Insurance Income of a Controlled Foreign Corporation for Taxable Years beginning After December 31, 1986 (§ 1.953–2(e)(3)(iii), 1.953–4(b), 1.953–5(a), 1.953–6(a), 1.953–7(c)(8), and 1.6046–1).

DATES: Written comments should be received on or before July 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986.

OMB Number: 1545–1142. Regulation Project Number: INTL–939–86.

Abstract: This regulation relates to the definition and computation of the insurance income of a controlled foreign corporation, and it also contains rules applicable to certain captive insurance companies. The information collection is required by the IRS in order for taxpayers to elect to locate risks with respect to moveable property by reference to the location of the property in a prior period; to allocate investment income to a particular category of insurance income; to allocate deductions to a particular category of insurance income; to determine the amount of those items, such as reserves, which are computed with reference to an insurance company's annual statement; to elect to have related person insurance income treated as income effectively connected with the conduct of a United States trade or business; and to collect the information required by Code section 6046 relating to controlled foreign corporations as defined in Code section 953(c).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Time Per Respondent/ Recordkeeper: 28 hr., 12 min.

Estimated Total Annual Burden Hours: 14,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–8716 Filed 5–7–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–29–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–29–91 (TD 8556), Computation and Characterization of Income and Earnings and Profits under the Dollar Approximate Separate Transactions Method of Accounting (DASTM) (§ 1.985–3).

DATES: Written comments should be received on or before July 9, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Computation and Characterization of Income and Earnings and Profits under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).

OMB Number: 1545–1051.

Regulation Project Number: INTL–29–91.

Abstract: This regulation provides that taxpayers operating in hyperinflationary currencies must use the United States dollar as their functional currency and compute income using the dollar approximate separate transactions method (DASTM). Small taxpayers may elect an alternate method by which to compute income or loss. For prior taxable years in which income was computed using the profit and loss method, taxpayers may elect to recompute their income using DASTM.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 700.

Estimated Time Per Respondent: 1 hour, 26 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–8717 Filed 5–7–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 2006

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 2006 as required by section 45K of the Internal Revenue Code (26 U.S.C. 45K). The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the sale of fuel from nonconventional sources under section 45K during calendar year 2006.

DATES: The 2006 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 2006.

Inflation Adjustment Factor: In the cases of gas produced from biomass and liquid, gaseous, or solid synthetic fuel produced from coal, the inflation adjustment factor for calendar year 2006 is 2.3429. In the case of facilities producing coke or coke gas, the inflation adjustment factor for calendar year 2006 is 1.0605.

Credit: The nonconventional source fuel credit for gas produced from biomass and for liquid, gaseous, or solid synthetic fuel produced from coal for calendar year 2006 (adjusted to reflect the phase-out amount) is $4.72 per barrel-of-oil equivalent of qualified fuels. In the case of facilities producing coke or coke gas, the nonconventional source fuel credit for calendar year 2006 is $3.18 per barrel-of-oil equivalent of qualified fuels.

Reference Price: The reference price for calendar year 2006 is $59.68. Because the reference price exceeds $23.50 multiplied by the inflation adjustment factor, under section 45K(b)(1), the credit for gas produced from biomass and for liquid, gaseous, or solid synthetic fuel produced from coal is reduced by $2.31 per barrel-of-oil equivalent of qualified fuels for calendar year 2006. The phase-out of the credit does not apply to facilities producing coke or coke gas.

FOR FURTHER INFORMATION CONTACT:

For questions about how the inflation adjustment factor is calculated—Wu-Lang Lee, RAS:R:TSBR, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 874–0531 (not a toll-free number).

For all other questions about the credit or the reference price—Jaime C. Park, CC:PSI:7, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–3120 (not a toll-free number).

Dated: April 23, 2007.

William O'Shea,

Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. E7–8747 Filed 5–7–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Committee of the Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 19, 2007, at 10 a.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 188–912–1227, or (414) 231–2360.

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 a meeting of the Area 4 Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 19, 2007, at 10 a.m., Central Time via a telephone conference call. You can submit written comments to the Panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, PO Box 3205, Milwaukee, WI 53201–3205, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Mary Ann Delzer at 188–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: April 27, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 07–2245 Filed 5–7–07; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Committee of the Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 12, 2007, at 9:30 a.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2365.

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 a meeting of the Area 5 Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 12, 2007, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, PO Box 3205, Milwaukee, WI 53201–3205, or you can contact us at *http://www.improveirs.org.* Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda will include the following: Various IRS issues.

Dated: April 27, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–8709 Filed 5–7–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 7, 2007 from 1 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

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 Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, June 7, 2007 from 1 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: April 7, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–8719 Filed 5–7–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee May 2007 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for May 15, 2007.

Date: May 15, 2007.

Time: Public meeting time: 9 a.m. to 11:30 a.m.

Location: Philadelphia Marriott, 1201 Market Street, Philadelphia, Pennsylvania 19107.

Subject: Review candidate designs for the 2008 American Bald Eagle Recovery and National Emblem Commemorative Coin, and other general business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: May 1, 2007.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E7–8789 Filed 5–7–07; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Revocation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled with prejudice.

Name	License No.	Issuing port
Rosa E. Garcia ...	20053	Laredo.

Dated: April 27, 2007.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E7–8770 Filed 5–7–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Rehabilitation Research and Development Service Scientific Merit Review Board will meet from 8 a.m. until 5:30 p.m. each day as indicated below:

August 29–30, 2007, Madison Loews Hotel, Washington, DC.

September 5–6, 2007, Sofitel Lafayette Hotel, Washington, DC.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meetings will be open to the public for the August 29 and September 5 sessions from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. The meetings will be closed as follows for the Board's review of research and development applications:

August 29 from 9 a.m. to 5:30 p.m.

August 30 from 8 a.m. to 5:30 p.m.

September 5 from 9 a.m. to 5:30 p.m.

September 6 from 8 a.m. to 5:30 p.m.

The reviews involve oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts. Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Section 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Those who plan to attend the open sessions should contact Terrilynn Carlton, Federal Designated Officer, Portfolio Manager, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 254–0265.

Dated: April 30, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–2252 Filed 5–7–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
May 8, 2007

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52

Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[Docket ID No. EPA–HQ–OAR–2005–0163; FRL–8307–7]

RIN–2060–AN28

Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: This action is a supplemental notice of proposed rulemaking (SNPR) to EPA's October 20, 2005 notice of proposed rulemaking (NPR). In the October 2005 NPR, EPA (we) proposed to revise the emissions test for existing electric generating units (EGUs) that are subject to the regulations governing the Prevention of Significant Deterioration (PSD) and nonattainment major New Source Review (NSR) programs (collectively ''NSR'') mandated by parts C and D of title I of the Clean Air Act (CAA). We proposed three alternatives for the emissions test: a maximum achievable hourly emissions test, a maximum achieved hourly emissions test, and an output-based hourly emissions test. This action recasts the proposed options so that the output-based test becomes an alternative method to implement the maximum achieved or maximum achievable hourly tests, rather than a separate option. This SNPR also proposes a new option in which the hourly emissions increase test is added to the existing requirements for computing a significant increase and a significant net emissions increase on an annual basis. It also includes proposed rule language and supplemental information for the October 2005 proposal, including an examination of the impacts on emissions and air quality.

These proposed regulations interpret the emissions increase component of the modification test under CAA 111(a)(4), in the context of NSR, for existing EGUs. The proposed regulations would promote the safety, reliability, and efficiency of EGUs. We are seeking comment on all aspects of this proposed rule.

DATES: *Comments.* Comments must be received on or before July 9, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before June 7, 2007.

Public Hearing: If anyone contacts us requesting to speak at a public hearing on or before May 29, 2007, we will hold a public hearing approximately 30 days after publication in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ–OAR–2005–0163 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2005–0163, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail code: 6102T, Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2005–0163. 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. EPA-HQ-OAR–2005–0163. 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.regulations.gov* 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.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 instructions on submitting comments, go to section B. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket. All documents in the docket are listed in the *http://www.regulations.gov* index. 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 *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Janet McDonald, Air Quality Policy Division (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–1450; fax number: (919) 541–5509, or electronic mail e-mail address: *mcdonald.janet@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by the subject rule for this action are fossil-fuel fired boilers and turbines serving an electric generator with nameplate capacity greater than 25 megawatts (MW) producing electricity for sale. Entities potentially affected by the subject rule for this action also include State, local, and tribal governments. Categories and entities potentially affected by this action are expected to include:

Industry Group	SIC[a]	NAICS[b]
Electric Services	491	221112.
Federal government	[1]22112	Fossil-fuel fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	22112	Fossil-fuel fired electric utility steam generating units owned by municipalities. Fossil-fuel fired electric utility steam generating units in Indian country.

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

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.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, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2005–0163.

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.

D. How can I find information about a possible public hearing?

People interested in presenting oral testimony or inquiring if a hearing is to be held should contact Ms. Pamela S. Long, New Source Review Group, Air Quality Policy Division (C504–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0641. If a hearing is to be held, persons interested in presenting oral testimony should notify Ms. Long at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed rules.

E. How is the preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. What should I consider as I prepare my comments for EPA?
D. How can I find information about a possible public hearing?
E. How is the preamble organized?
II. Overview
A. Option 1: Hourly Emissions Increase Test Followed by Annual Emissions Test
B. Option 2: Hourly Emissions Increase Test
III. Analyses Supporting Proposed Options
A. The Integrated Planning Model
B. NSR Availability Scenarios—Description of the Scenarios
C. NSR Availability Scenarios-Discussion of SO_2 and NO_X Results
D. NSR Availability Scenarios-Discussion of $PM_{2.5}$, VOC, and CO Results
E. NSR Efficiency Scenario
IV. Proposed Regulations for Option 1: Hourly Emissions Increase Test Followed by Annual Emissions Test
A. Test for EGUs Based on Maximum Achieved Emissions Rates
B. Test for EGUs Based on Maximum Achievable Emissions
V. Proposed Regulations for Option 2: Hourly Emissions Increase Test
VI. Legal Basis and Policy Rationale
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
VIII. Statutory Authority

II. Overview

This action is a SNPR to EPA's October 20, 2005 (70 FR 61081) NPR. In the October 2005 NPR, we proposed to revise the emissions test for existing EGUs that are subject to the regulations governing the PSD and nonattainment major NSR programs (collectively ''NSR'') mandated by parts C and D of title I of the CAA. We proposed three alternatives for the emissions test: a maximum achievable hourly emissions test, a maximum achieved hourly emissions test, and an output-based hourly emissions test. In the NPR, we did not propose to include, along with any of the revised NSR emissions tests, any provisions for computing a significant increase or a significant net

[1] Establishments owned and operated by Federal, State, or local government are classified according to the activity in which they are engaged.

emissions increase, although we solicited comment on retaining such provisions. In addition, we solicited comment on whether, if we revised the NSR test to be a maximum achieved emissions test or output-based emissions test, we should revise the NSPS regulations to include a maximum achieved emissions test or an output-based emissions test. This action recasts the proposed options so that the output test, instead of being an alternative to the maximum hourly achieved or maximum hourly achievable tests, becomes an alternative method for sources to implement those two tests. Specifically, we propose that each of the two tests would be implemented through (i) an input method (as defined below), (ii) the output method, or (iii) at the source's choice, either the input or output method. This action includes proposed rule language and supplemental information for the October 2005 proposal as it relates to the major NSR regulations, including an examination of the impacts on emissions and air quality that would result were we to finalize one of the applicability tests proposed in the October 2005 proposal or in this SNPR, as described below.

This action also proposes an additional option that was not included in the October 2005 rule. For convenience, this action characterizes the tests contained in the October 2005 NPR, described above, as Option 2 (with the maximum hourly achieved test characterized as Alternatives 1–4 and the maximum hourly achievable test characterized as Alternatives 5–6 within that Option 2, and with each of those tests including output-based alternatives). For the additional option proposed, which we characterize as Option 1, we are proposing that an hourly emissions increase test (either maximum achieved or maximum achievable, each with output-based alternatives) would include the significant net emissions increase test in the current major NSR rules, which is calculated on an actual-to-projected-actual annual emissions basis. We are also clarifying that Option 1 is our preferred option.

When we proposed a revised emissions test for EGUs in October 2005, we referenced *United States* v. *Duke Energy Corp.,* 411 F.3d 539 (4th Cir.) rehearing den.____ F.3d____ (2005), cert. granted ____ U.S.____ (2006). At the time of our proposal, the Fourth Circuit had denied the United States' petition for rehearing on the decision in Duke Energy, but the deadline for filing a petition for *certiorari* to the United States Supreme Court had not yet passed. Subsequently, on December 28, 2005, Intervenor plaintiffs Environmental Defense Fund, North Carolina Sierra Club, and North Carolina Public Interest Research Group filed a petition for *certiorari* asking the court to address several matters. On May 15, 2006 the United States Supreme Court granted the petition for a writ of *certiorari.* On April 2, 2007, the Supreme Court vacated and remanded the Fourth Circuit decision. [549 U.S.__ (2007)] , 75 U.S.L.W. 4167 (April 2, 2007).

When we published the proposal in October 2005, it was in part in response to the Fourth Circuit's holding that EPA must read the 1980 PSD regulations to contain an hourly test, consistent with the NSPS regulations. The Supreme Court's vacatur was based on its finding that such a reading of the 1980 PSD regulations ''was inconsistent with their terms.'' The Supreme Court, however, indicated that EPA may be able to revise the regulations when, as here, it has a rational reason for doing so. While there is no longer a need to provide national consistency in light of the Fourth Circuit decision, we believe that the options for a maximum hourly test that we proposed in our October 2005 NPR and continue to propose in this SNPR are an appropriate exercise of our discretion, especially in light of the substantial EGU emission reductions from more efficient air quality programs promulgated after 1980. Accordingly, we continue to pursue the viability of imposing an hourly emissions test on EGUs for purposes of major NSR applicability.

In May 2001, President Bush's National Energy Policy Development Group issued findings and key recommendations for a National Energy Policy. This document included numerous recommendations for action, including a recommendation that the EPA Administrator, in consultation with the Secretary of Energy and other relevant agencies, review NSR regulations, including administrative interpretation and implementation. The recommendation requested that we issue a report to the President on the impact of the regulations on investment in new utility and refinery generation capacity, energy efficiency, and environmental protection. Our report to the President and our recommendations in response to the National Energy Policy were issued on June 13, 2002. A copy of this information is available at *http://www.epa.gov/nsr/publications.html.*

In that report we concluded:

> As applied to existing power plants and refineries, EPA concludes that the NSR program has impeded or resulted in the cancellation of projects which would maintain and improve reliability, efficiency and safety of existing energy capacity. Such discouragement results in lost capacity, as well as lost opportunities to improve energy efficiency and reduce air pollution. (New Source Review Report to the President at pg. 3.)

On December 31, 2002, we promulgated final regulations that implemented several of the recommendations in the New Source Review Report to the President. However, that action left the NSR regulations as they related to utilities largely unchanged. This action continues to address the recommendations in the New Source Review Report to the President as they relate to electric utilities specifically and in light of the regulatory requirements for EGUs that have been promulgated since our 2002 regulations.

The regulations proposed in the October 2005 NPR and on this action would promote the safety, reliability, and efficiency of EGUs. The proposed regulations are consistent with the primary purpose of the major NSR program, which is to balance the need for environmental protection and economic growth. The proposed regulations reasonably balance the economic need of sources to use existing physical and operating capacity with the environmental benefit of regulating those emissions increases related to a physical or operational change. This is particularly true in light of the substantial national EGU emissions reductions that other programs have achieved or are expected to achieve, which we described in detail at 70 FR 61083. Moreover, as the analyses included in this SNPR demonstrate, the proposed regulations would not have an undue adverse impact on local air quality.

This section gives an overview of our proposed actions for major NSR applicability at existing EGUs, including the proposals in the NPR, as recast in this proposal, for the maximum hourly emissions tests and this additional proposal. Each of the options would promote the safety, reliability, and efficiency of EGUs. Each of the options would also balance the economic need of sources to use existing physical and operating capacity with the environmental benefit of regulating those emissions increases related to a change, considering the substantial national emissions reductions other programs have achieved or will achieve

from EGUs. Our preferred Option is Option 1. We will select the final option after weighing the public comments on the Options. Table 1 summarizes our two Options.

TABLE 1.—PROPOSED OPTIONS FOR MAJOR NSR APPLICABILITY FOR EXISTING EGU [2]

Option 1	Step 1: Physical Change or Change in the Method of Operation. Step 2: Hourly Emissions Increase Test. • Alternative 1—Maximum achieved hourly emissions; statistical approach; input basis. • Alternative 2—Maximum achieved hourly emissions; statistical approach; output basis. • Alternative 3—Maximum achieved hourly emissions; one-in-5-year baseline; input basis. • Alternative 4—Maximum achieved hourly emissions; one-in-5-year baseline; output basis. • Alternative 5—NSPS test—maximum achievable hourly emissions; input basis. • Alternative 6—NSPS test-maximum achievable hourly emissions; output basis. Step 3: Significant Emissions Increase Determined Using the Actual-to-Projected-Actual Emissions Test as in the Current Rules.[3] Step 4: Significant Net Emissions Increase as in the Current Rules.
Option 2	Step 1: Physical Change or Change in the Method of Operation. Step 2: Hourly Emissions Increase Test. • Alternative 1—Maximum achieved hourly emissions; statistical approach; input basis. • Alternative 2—Maximum achieved hourly emissions; statistical approach; output basis. • Alternative 3—Maximum achieved hourly emissions; one-in-5-year baseline; input basis. • Alternative 4—Maximum achieved hourly emissions; one-in-5-year baseline; output basis. • Alternative 5—NSPS test—maximum achievable hourly emissions; input basis. • Alternative 6—NSPS test-maximum achievable hourly emissions; output basis.

We request public comment on all aspects of this action. We intend to finalize either Option 1 or Option 2. We will also finalize either the maximum achieved or the maximum achievable alternative. We intend to respond to public comments on the October 20, 2005 NPR and this notice in a single **Federal Register** Notice and Response to Comments Document at the time that we take final action.

A. Option 1: Hourly Emissions Increase Test Followed by Annual Emissions Test

In the NPR, we did not propose to include, along with any of the revised NSR emissions tests, any provisions for computing a significant emissions increase or a significant net emissions increase, although we solicited comment on retaining such provisions. Many commenters believed netting is required under the Alabama Power Court decision, and supported options retaining netting. Therefore, we are proposing that major NSR applicability would include an hourly emissions increase test, followed by the current regulatory requirements for the actual-to-projected-actual emissions increase test to determine significance, and the significant net emissions increase test. We call this approach Option 1 and we are proposing it as our preferred option. Specifically, under Option 1, the major NSR program would include a four-step process as follows: (1) Physical change or change in the method of operation; (2) hourly emissions increase test ; (3) significant emissions increase as in the current major NSR regulations; and (4) significant net emissions increase as in the current major NSR regulations. Section IV of this preamble describes Option 1 in more detail. Our proposed regulatory language is for Option 1.

Option 1 facilitates improvements for efficiency, safety, and reliability, without adverse air quality effects (as the discussion of the IPM and air quality analyses in Section III indicates). Specifically, changes that will not increase the hourly emissions rate—such as those to make repairs to reduce the number of forced outages—do not require further review under Option 1. That is, if there would be no hourly emissions increase following a physical change or change in the method of operation, the proposed rule does not require a determination of whether a significant increase or a significant net emissions increase would occur. Thus, Option 1 would simplify major NSR for changes where there is no increase in hourly emissions. However, many public commenters urged that we retain the significant emissions increase component of the emissions increase test. Therefore, we are proposing further review under Option 1 in instances where a physical or operational change at a given unit would increase the hourly emissions rate, such as would occur where there is an increase in existing capacity. In such cases, Option 1 requires further review using the significant increase and significant net emissions increase components of the current regulations. This approach retains an annual emissions test in determining NSR applicability.

We are proposing both a maximum achieved hourly and a maximum achievable hourly emissions increase test under Step 2 of Option 1, which we discuss in detail in Section IV.A. of this preamble. Consistent with our policy goal of improving energy efficiency, we are proposing both an input [4] and output based format for both the maximum achievable and maximum achieved hourly emissions increase test options. Specifically, we are proposing the alternatives of (i) use of input-based methodology for each test, (ii) use of output-based methodology for each test, or (iii) allowing the source to choose between input- or output-based methodology. Some commenters strongly opposed an output-based format, believing that it would encourage emissions increases. We believe these concerns are mitigated in a system where total annual emissions

[2] For clarity, this table lists all of the steps in the applicability determinations under the various options and alternatives. These steps include, as Step 1, the determination of whether a physical change or change in the method of operation has occurred. This Step 1 is included in the table solely for purposes of clarity; neither the October 2005 NPR nor this action proposes any action of any type (or makes any re-proposal) concerning the regulations defining physical change or change in the method of operation. Similarly, the steps also include, as Steps 3 and 4, the current net significance test; and this SNPR does not propose any action of any type (or make any re-proposal) concerning the current net significance test. Finally, this action does not propose any action of any type (or make any re-proposal) concerning the current applicability test for EGUs.

[3] Steps 3 and 4 only apply when a unit fails Step 2. (That is, it is determined that an hourly emissions increase would occur.)

[4] In this context, we use the term ''input'' as a convenient way to refer to the hourly emission rate test, and to distinguish it from the output test, which is calculated on the basis of hourly emissions per kilowatt hour of generation.

are capped nationally. Other commenters supported the output-based format, noting that it would encourage energy efficiency.

We agree that an output-based test encourages efficient units, which has well-recognized benefits. The more efficient an EGU, the less it emits for a given period of operation. For example, a 50 MW combustion turbine that operates 500 hours a year, for 25,000 MWh per year at an emission rate of 75 ppm, would emit 46 tons per year at 25 percent efficiency, 41 tons per year at 28 percent efficiency, 37 tons per year at 31 percent efficiency, and 34 tons per year at 34 percent efficiency.

Furthermore, we have established pollution prevention as one of our highest priorities. One of the opportunities for pollution prevention is maximizing the efficiency of energy generation. An output-based standard establishes emission limits in a format that incorporates the effects of unit efficiency by relating emissions to the amount of useful energy generated, not the amount of fuel burned. By relating emission limitations to the productive output of the process, output-based emission limits encourage energy efficiency because any increase in overall energy efficiency results in a lower emission rate. Allowing energy efficiency as a pollution control measure provides regulated sources with an additional compliance option that can lead to reduced compliance costs as well as lower emissions. The use of more efficient technologies reduces fossil fuel use and leads to multi-media reductions in environmental impacts both on-site and off-site. On-site benefits include lower emissions of all products of combustion, including hazardous air pollutants, as well as reducing any solid waste and wastewater discharges. Off-site benefits include the reduction of emissions and non-air environmental impacts from the production, processing, and transportation of fuels.

While output-based emission limits have been used for regulating many industries, input-based emission limits have been the traditional method to regulate steam generating units. However, this trend is changing as we seek to promote pollution prevention and provide more compliance flexibility to combustion sources. For example, in 1998 we amended the NSPS for electric utility steam generating units (40 CFR part 60, subpart Da) to use output-based standards for nitrogen oxides (NO_X ; 40 CFR 63.44a, 62 FR 36954, and 63 FR 49446). We recently promulgated new output-based emission limits for sulfur dioxide (SO_2) and NO_X under subpart Da of 40 CFR part 60 (71 FR 9866) and for combustion turbines. (71 FR 38482.)

B. Option 2: Hourly Emissions Increase Test

For Option 2, we are proposing a maximum achieved emissions increase test alternative and a maximum achievable emissions increase test alternative. For both the maximum achieved and maximum achievable emissions increase test, we are also proposing the alternatives of (i) the use of input-based methodology for each test; (ii) the use of output-based methodology for each test, or (iii) allowing the source to choose between input- or output-based methodology. We describe these alternatives in detail in Section V. of this preamble.

Option 2 with the proposed maximum hourly achieved test would simplify NSR applicability determinations. Option 2 with the proposed maximum hourly achievable test provides even more simplicity by conforming NSR applicability determinations to NSPS applicability determinations. We also note the achieved and achievable tests eliminate the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, because any increase in the emissions under the hourly emissions tests would logically be attributed to the change. Both the achieved and achievable tests reduce recordkeeping and reporting burdens on sources because compliance will no longer rely on synthesizing emissions data into rolling average emissions. Option 2 would reduce the reviewing authorities' compliance and enforcement burden compared to the current regulations.

In the October 2005 NPR, we also solicited comment on whether, if we revised the NSR test to be a maximum achieved emissions test or output-based emissions test, we should revise the NSPS regulations to include a maximum achieved emissions test or an output-based emissions test. This SNPR concerns the emissions test for existing EGUs in the major NSR programs. It does not address the emissions test for existing EGUs under the NSPS program.

III. Analyses Supporting Proposed Options

We examined how our proposed options for major NSR applicability for EGUs would affect control technology installation, emissions, and air quality. We conducted two separate analyses using the Integrated Planning Model (IPM). Our analyses show that none of the proposed options would have a detrimental impact on county-level emissions or local air quality. This section discusses our analyses and findings. More extensive information on our analyses is available in the Technical Support Document, which is available in Docket ID No. EPA–HQ–OAR–2005–0163.

A. The Integrated Planning Model

We use the IPM to analyze the projected impact of environmental policies on the electric power sector in the 48 contiguous States and the District of Columbia. The IPM is a multi-regional, dynamic, deterministic linear programming model of the entire electric power sector. It provides forecasts of least-cost capacity expansion, electricity dispatch, and emission control strategies for meeting energy demand and environmental, transmission, dispatch, and reliability constraints. We have used the IPM extensively to evaluate the cost and emissions impacts of proposed policies to limit emissions of sulfur dioxide and nitrogen oxides from the electric power sector. The IPM was a key analytical tool in developing the Clean Air Interstate Regulation (CAIR; see 70 FR 25162). However, the IPM capabilities and results are not limited to projections for CAIR States. It includes data for and projects emissions and controls for the electric sector in the contiguous United States.

Each IPM model run is based on emissions controls on existing units, State regulations, cost and performance of generating technologies, SO_2 and NO_X heat rates, natural gas supply and prices, and electricity demand growth assumptions. This input is updated on a regular basis. We used the IPM to project EGU SO_2 and NO_X controls, emissions, and air quality in 2020 considering projected emission controls under the CAIR, Clean Air Mercury Rule (CAMR), and Clean Air Visibility Rule (CAVR). For convenience, we refer to this projection as the CAIR/CAMR/CAVR 2020 Base Case Scenario or, more simply, the Base Case Scenario. The IPM model used for this scenario is IPM v.2.1.9.[5]

The IPM v 2.1.9 is based on 2,053 model plants, which represent 13,819 EGUs, including 1,242 coal-fired EGUs.[6] This represents all existing EGUs in the

[5] Complete documentation for IPM, including the Base Case Scenario, is available at *http://www.epa.gov/airmarkets/progsregs/epa-ipm/index.html.* See also Docket EPA–HQ–OAR–2005–0163, DCN 01.

[6] See the NEEDS 2004 documentation for IPM v.2.1.9 in Exhibit 4–6, which can be found at *http://www.epa.gov/airmarkets/progsregs/epa-ipm/past-modeling.html.* See also Docket EPA–HQ–OAR–2005–0163, DCN 02.

contiguous United States as of 2004, as well as new units that are already planned or committed, and new units that are projected to come online by 2007. The underlying data for these plants is contained in the National Electric Energy Data System (NEEDS), which contains geographic location, fuel use, emissions control, and other data on each existing EGU. NEEDS data for existing EGUs comes from a number of sources, including information submitted to EPA under the Title IV Acid Rain Program and the NO_X Budget Program, as well as information submitted to the Department of Energy's (DOE's) Energy Information Agency, on Forms EIA 860 and 767. That is, the underlying data for each existing EGU in the IPM v.2.1.9 is information from an actual EGU in operation as of 2004 that has been submitted to the EPA or the DOE.

The IPM v.2.1.9 model also accounts for growth in the EGU sector that is projected to occur through new builds, including both planned-committed units and potential units. Planned-committed EGUs are those that are likely to come online, because ground has been broken, financing obtained, or other demonstrable factors indicate a high probability that the EGU will come online. Planned-committed units in IPM v.2.1.9 were based on two information sources: RDI NewGen database (RDI) distributed by Platts (*http://www.platts.com*) and the inventory of planned-committed units assembled by DOE, Energy Information Administration, for their Annual Energy Outlook. Potential EGUs are those units that may be built at a future date in response to electricity demand. In IPM v.2.1.9, potential new units are modeled as additional capacity and generation that may come online in each model region.

IPM v.2.1.9 also accounts for emission limitations due to State regulations and enforcement actions. It includes State regulations that limit SO_2 and NO_X emissions from EGUs. These are included in Appendix 3–2, available at *http://www.epa.gov/airmarkets/progsregs/epa-ipm/docs/bc3appendix.pdf.*[7] The IPM v.2.1.9 includes NSR settlement requirements for the following six utility companies: SIGECO, PSEG Fossil, TECO, We Energies (WEPCO), VEPCO and Santee Cooper. The settlements are included as they existed on March 19, 2004. A summary of the settlement agreements is included in Appendix 3–3 of the IPM documentation and is available *http://www.epa.gov/airmarkets/progsregs/epa-ipm/docs/bc3appendix.pdf.*[8]

In the IPM, EPA does not attempt to model unit-specific decisions to make equipment change or upgrades to non-environmental related equipment that could affect efficiency, availability or cost to operate the unit (and thus the amount of generation). Modeling such decisions would require either obtaining or making assumptions about the condition of equipment at units and would greatly increase model size, limiting its applicability in policy analysis. Specifically, IPM does not project that any particular existing EGU will make physical or operational changes that increase its efficiency, generation, or emissions. Therefore, IPM does not predict which particular EGUs will be subject to the major NSR applicability requirements. However, as discussed below, EPA has specially designed inputs to IPM that provide useful information directly related to major NSR applicability requirements. As we discuss below, these inputs are in the form of constraints to the IPM model rather than changes on a unit-by-unit basis.

Reliability is a critical element of power plant operation. Reliability is generally defined as whether an EGU is able to operate over sustained periods at the level of output required by the utility. One measure of reliability is availability, the percentage of total time in a given period that an EGU is available to generate electricity. An EGU is available if it is capable of providing service, regardless of the capacity level that can be provided. Availability is generally measured using the number of hours that an EGU operates annually. For example, if an EGU operated 8,760 hours in a particular year, it was 100 percent available. Each year, EGUs are not available for some number of hours due to planned outages, maintenance outages, and forced outages.

IPM v.2.1.9 uses information from the North American Electric Reliability Council (NERC)'s Generator Availability Data System (GADS) to determine the annual availability for EGUs. The GADS database includes operating histories—some dating back to the early 1960's—for more than 6,500 EGUs. These units represent more than 75 percent of the installed generating capacity in the United States and Canada. Each utility provides reports, detailing its units' operation and performance. The reports include types and causes of outages and deratings, unit capacity ratings, energy production, fuel use, and design information. GADS provides a standard set of definitions for determining how to classify an outage on a unit, including planned outages, maintenance outages, and forced outages. The GADS data are reported and summarized annually. A planned outage is the removal of a unit from service to perform work on specific components that is scheduled well in advance and has a predetermined start date and duration (for example, annual overhaul, inspections, testing). Turbine and boiler overhauls or inspections, testing, and nuclear refueling are typical planned outages.

A maintenance outage is the removal of a unit from service to perform work on specific components that can be deferred beyond the end of the next weekend, but requires the unit be removed from service before the next planned outage. Typically, maintenance outages may occur any time during the year, have flexible start dates, and may or may not have predetermined durations. For example, a maintenance outage would occur if an EGU experiences a sudden increase in fan vibration. The vibration is not severe enough to remove the unit from service immediately, but does require that the unit be removed from service soon to check the problem and make repairs.

A forced outage is an unplanned component failure or other breakdown that requires the unit be removed from service immediately, that is, within 6 hours, or before the end of the next weekend. A common cause of forced outages is boiler tube failure.

Each EGU must report the number of hours due to planned outages, maintenance outages, and forced outages to NERC annually. NERC summarized the data for all coal-fired EGUs over the period from 2000–2004 in its Annual Unit Performance Statistics Report.[9] For the years 2001–2004, the average annual planned outage hours for all coal-fired EGUs was 572.09 (about 23 days), the average annual maintenance outage hours for all coal-fired EGUs was 156.27 (about 6 days), and the average annual forced outage hours for all coal-fired EGUs was 348.75 (about 14 days). The total annual unavailable hours for all coal-fired EGUs were 1,087.57, which is 15.1 percent of the total annual hours of 8,760. Based on this data, the IPM v.2.1.9 assumed coal-fired EGUs were 85 percent available. As just noted, of the 1,087.57 total unavailable hours, 348.75 were forced outage hours, which means that coal-fired EGUs were

[7] See also Docket EPA–HQ–OAR–2005–0163, DCN 03.

[8] See also Docket EPA–HQ–OAR–2005–0163, DCN 03.

[9] The report is available at *http://www.nerc.com/~gads/* and in Docket EPA–HQ–OAR–2005–0163, DCN 04.

unavailable due to forced outages approximately 4 percent of the hours in a year for the years 2000–2004.

We recently released a graphic presentation of electric power sector results under CAIR/CAMR/CAVR. Entitled ''Contributions of CAIR/CAMR/CAVR to NAAQS Attainment: Focus on Control Technologies and Emission Reductions in the Electric Power Sector,'' it is available at *http://www.epa.gov/cair/charts.html.*[10] As this presentation shows, under the CAIR/CAMR/CAVR 2020 Base Case Scenario, local SO_2 and NO_X emissions generally decrease, average SO_2 and NO_X emission rates decrease, and national SO_2 and NO_X emissions decrease. As this document also shows, half of the coal-fired generation is expected to have scrubbers and either SCR or SNCR by 2020. These effects occur throughout the contiguous 48 States, not just in the CAIR States.

We developed IPM scenarios to examine the effects of our proposed regulations, including the maximum hourly emissions increase tests (achievable and achieved, on an input and output basis), on EGU emissions and control technologies. These new IPM scenarios incorporate the parameters used in the IPM model v.2.1.9 that we describe above, including information for the electric sector in the contiguous United States. Thus, these new IPM scenarios revise the parameters in the CAIR/CAMR/CAVR 2020 Base Case Scenario consistent with the way EGUs might operate under the proposed major NSR applicability changes. We call these IPM scenarios the NSR Availability and the NSR Efficiency Scenarios, and discuss them in the following sections.

B. NSR Availability Scenarios—Description of the Scenarios

We developed two IPM scenarios, which we call the CAIR/CAMR/CAVR NSR Availability Scenarios, or, more simply, the NSR Availability Scenarios, to examine how changes to major NSR applicability under the proposed regulations could, by allowing sources to make repairs or improvements that increase hours of operation, affect emissions and control technology installation. The NSR Availability IPM scenarios are based on the CAIR/CAMR/CAVR 2020 Scenario.

The primary difference between the current applicability test and the proposed tests is that under the proposed tests, sources could more readily make repairs or improvements that prevent forced outages, and thereby allow the source to operate more hours. These repairs allow the source to operate at the higher availability level that it achieved before its equipment degraded so much as to cause more forced outages.

Some commenters emphasized this difference between the current applicability test and our proposals in the NPR. They explained that because, as we noted at 70 FR 61100, hours of operation are considered in determining annual emissions under the actual-to-projected-actual test in the current major NSR program but have no role in any of our proposed hourly emissions increase test options, an EGU could make a change that does not increase the maximum hourly emissions rate, but does allow the source to run more hours. This change would not trigger review under a maximum hourly emissions increase test in any case, but in some cases might trigger review under the current major NSR emissions increase test based on annual emissions with a 5-year baseline period. These commenters assert that the proposed applicability tests could allow substantial increases in annual emissions without triggering NSR.

For several reasons, we believe commenters have overstated the likelihood that substantial increases in annual emissions and resulting deterioration in air quality would occur under the proposed maximum hourly emissions tests, as opposed to the current annual emissions, 5-year baseline test. First, an EGU can increase its hours of operation under the current regulations, as long as it does not make a physical change or change in the method of operation. Information from the RBLC confirms that most EGUs are already permitted to run 8760 hours annually. That is, increases in hours of operation at most EGUs are not a change in the method of operation. They are allowed and frequently occur at many EGUs under the current regulations without triggering major NSR. Second, increases in actual emissions stemming from increases in hours of operation that are unrelated to the change, are not considered in determining projected actual emissions. To the extent that changes resulting in increased hours would occur under the proposed regulatory scheme, any resulting increases in emissions will be diminished as the CAIR and BART programs are implemented and the SO_2 and NO_X emissions for most EGUs are capped. As we described in detail in the NPR, 70 FR 61087, national and regional caps limit total actual annual EGU SO_2 and NO_X emissions. These caps greatly reduce the significance of hours of operations on actual emissions from the sector nationally. Furthermore, as we indicated in our recent report of the CAIR/CAMR/CAVR, the more hours an EGU operates, the more likely it is to install controls.[11] Moreover, existing synthetic minor limits to avoid major NSR and enforceable limits on hours of operation on a particular EGU as a result of netting would remain in place under any revised emissions increase test. We thus believe the opportunities for many EGUs to significantly increase their emissions through higher hours of operation under a maximum hourly emissions increase test, as compared to the current annual emissions increase test with a 5-year baseline period, are generally limited.

Nonetheless, we want to comprehensively examine the outcomes of a maximum hourly emissions increase test, using a robust methodology based on conservative (that is, protective of the environment) estimates. We therefore developed two IPM scenarios, which we call the CAIR/CAMR/CAVR NSR Availability Scenarios, or, more simply, the NSR Availability Scenarios, to examine how changes to major NSR applicability under the proposed regulations could, by allowing sources to make repairs or improvements that increase hours of operation, affect emissions and control technology installation. These IPM scenarios are based on the CAIR/CAMR/CAVR 2020 Scenario, which employs the IPM v.2.1.9 model that we describe in Section III. A. of this preamble, including information for the electric sector in the contiguous United States. Section III A. of this document also contains specific information on the assumptions about EGU assumptions in the IPM v.2.1.9. The NSR Availability Scenarios retain the heat input for each EGU from the CAIR/CAMR/CAVR 2020 Scenario. That is, we did not assume that any existing EGU would increase its capacity in the NSR Availability Scenario.

The parameters in the IPM model are based on availability for 6,500 EGUs over the 5-year period from 2000–2004. In the NSR Availability scenarios, however, we changed the parameters in IPM v.2.1.9 consistent with the way EGUs might operate under the more flexible regulations that we are proposing. That is, we assumed that

[10] Also available in Docket EPA–HQ–OAR–2005–0163, DCN 05.

[11] See our presentation, ''Contributions of CAIR/CAMR/CAVR to NAAQS Attainment: Focus on Control Technologies and Emission Reductions in the Electric Power Sector,'' on pages 39 and 43. The presentation is available at *http://www.epa.gov/cair/charts.html.* Also available in Docket EPA–HQ–OAR–2005–0163, DCN 05.

some owner/operators might make changes that increase the hours of operation of some EGUs. It is unlikely that an owner/operator would be able to make changes that reduce the hours that an EGU is unavailable due to a planned outage or a maintenance outage. However, EGUs would be able to make changes that increase their hours of operation as a result of a reduction in the number and length of forced outages. Specifically, with more flexibility concerning the number of hours EGUs operate annually, EGU owner/operators may replace broken-down equipment in an effort to reduce the number of forced outages. Such actions would increase the safety, reliability, and efficiency of EGUs, consistent with one of our primary policy goals for our proposed regulations.

Therefore, in the NSR Availability Scenario, we assumed that coal-fired EGUs would be able to make changes that affect forced outage hours in two, alternative, ways: (1) Coal-fired EGUs would reduce their forced outage hours by half (2 percent increase in availability); and (2) coal-fired EGUs would have no forced outage hours (4 percent increase in availability). Therefore, in the first model run, we increased the coal-fired availability by 2 percent, from 85 percent to 87 percent annually. In the second NSR EGU run, we increased coal-fired availability by 4 percent, to 89 percent annually. We believe it is unlikely that an EGU would be able to make repairs that completely eliminate forced outage hours. However, we wanted a robust examination of changes that could impact emissions and air quality.[12] We therefore made the very conservative assumption to increase to EGU availability by 2 percent and 4 percent over the actual historical hours of operation for 6,500 EGUs over the years 2000–2004. All other information in the NSR Availability Scenarios is the same as that in IPM v.2.1.9 used for the CAIR/CAMR/CAVR Scenario.

The NERC GADS calculates the average availability for an EGU by taking the actual total number of unavailable hours in a given year for all EGUs and dividing it evenly among the total number of EGUs. Based on the GADS data, the IPM assumes an upper bound of 85 percent availability for coal-fired EGUs. In GADS data for the years 2000–2004, some EGUs actually had more than 85 percent availability and some actually had less. The particular EGUs that had greater than 85 percent availability and less than 85 percent varied from year to year. Similarly, by eliminating forced outages, some EGUs could increase their availability by more than 2–4 percent and some EGUs could increase their availability by less than 2–4 percent. Likewise, the particular EGUs that were able to reduce their forced outage hours would also vary from year to year. For modeling purposes, it thus makes more sense to assume an average availability than to determine unit-by-unit availabilities for each and every EGU in a given year.

Our approach based on average availability is also consistent with actual historical operations at particular EGUs and plantsites, which are most directly related to local emissions and air quality. Variation in actual annual hours of operation at a given EGU and at given plantsites do occur under current major NSR applicability. It is not uncommon for actual hours of operation for a particular EGU to vary by 348 hours (4 percent availability) or more from year to year. It is also not uncommon for the variation in actual hours of operation to occur among EGUs at a particular plantsite by 4 percent or more from year to year. For example, in one year Unit A might run 7,800 hours and Unit B might run 7,400 hours. In the next year Unit B might run 7,800 hours and Unit A 7,400 hours. This pattern further supports an approach based on average availability for estimating local emissions. Changes in average availability, rather than the absolute availability of any given EGU, thus is appropriate for analyzing the impact of proposed changes to major NSR applicability.

C. NSR Availability Scenarios—Discussion of SO_2 and NO_X Results

This section discusses the SO_2 and NO_X control device installation, national emissions, local emissions, and impact on air quality for EGUs under the NSR Availability Scenario.

1. *SO_2 and NO_X Control Device Installation.* As Table 2 shows, the NSR Availability Scenarios project retrofitting of more control devices than under the CAIR/CAMR/CAVR 2020 Scenario.[13] This result occurs whether hours of operation increase by 2 percent or by 4 percent. Significantly, under the 4 percent scenario, more Gigawatts (GW) of electric capacity are controlled than under the 2 percent scenario. For example, under NSR Availability 4%, there is 3.63 more GW of national EGU capacity with scrubbers than under CAIR/CAMR/CAVR 2020. These results are consistent with what IPM generally projects, as noted above; that is, the more hours an EGU operates, the more likely it is to install controls.[14] We thus conclude that the more hours an EGU operates, the more likely it is to install controls, regardless of whether the major NSR applicability test is on an hourly basis or an annual basis.

[12] While we believe it is most likely that an EGU would increase its hours of operation under these proposed regulations due to reducing the number of hours that the EGU is unavailable due to forced outage hurs, the analysis is applicable to increaes in hours of operation for other reasons.

[13] Available in Docket EPA–HQ–OAR–2005–0163, DCN 06. (System Summary Report for NSR Availability).

[14] See our presentation, ''Contributions of CAIR/CAMR/CAVR to NAAQS Attainment: Focus on Control Technologies and Emission Reductions in the Electri Power Sector,'' on pages 39 and 43. The presentation is available at *http://www.epa.gov/cair/charts.html.* Also available in Docket EPA–HQ–OAR–2005–0163, DCN 05.

TABLE 2.—2020 NATIONAL EGUS WITH EMISSION CONTROLS UNDER NSR AVAILABILITY SCENARIOS

Emission control type	EGUs with additional controls compared to 2004 base case		EGUs with additional controls compared to CAIR/CAMR/CAVR 2020	
	NSR availability 2%	NSR availability 4%	NSR availability 2%	NSR availability 4%
FGD[15]	109.62 GW	111.53 GW	1.71 GW	3.63 GW
SCR[16]	73.47 GW	73.92 GW	0.62 GW	1.07 GW

2. *SO_2 and NO_X National Emissions.* As Table 3 shows, the NSR Availability Scenarios project essentially no changes in SO_2 or NO_X emissions nationally by 2020 as compared to emissions under the CAIR/CAMR/CAVR 2020 Scenario.[17] This result is consistent with the fact that under the NSR Availability Scenarios, the amount of controls increases, compared to CAIR/CAMR/CAVR 2020, and we find that these associated emissions decreases are offset by the emissions increases associated with the reduced forced outages and higher production levels.

TABLE 3.—NATIONAL EGU EMISSIONS UNDER NSR AVAILABILITY SCENARIOS COMPARED TO CAIR/CAMR/CAVR 2020 (TPY)

Pollutant	CAIR/CAMR/CAVR	NSR 4%	NSR 2%	Change-NSR 4%	Change-NSR 2%
SO_2	4,277,000	4,271,000	4,261,000	−6,000 <1% decrease	−16,000 <1% decrease.
NO_X	1,989,000	2,016,000	2,003,000	28,000 1% increase	14,000 1% increase.

As noted above, the NSR Availability Scenarios examine emissions changes based on very conservative estimates developed using actual historical hours of operation for 6,500 EGUs over the years 2000–2004. We conclude that to any extent that EGU hours of operation increase under a maximum hourly test, as opposed to the current average annual 5-year baseline test, such increased hours of operation would not increase national EGU SO_2 emissions. The increased availability would have very little effect on national NO_X emissions, with approximately one percent increase nationally. This conclusion as to emissions in the contiguous 48 States supports extending the proposed rules nationwide, instead of limiting them to the States in the CAIR region.

3. *SO_2 and NO_X Local Emissions Impact.* To examine the effect of the maximum hourly and 5-year baseline tests on local air quality, we compared 2020 county-level EGU SO_2 and NO_X emissions under the CAIR/CAMR/CAVR 2020 and NSR Availability (4%) Scenario.[18] We describe these changes in detail in Chapter 4 of the Technical Support Document (TSD). As the TSD shows, the proposed revised NSR applicability tests would, under the very conservative assumptions described above, result in a somewhat different pattern of local emissions, with some counties experiencing reductions, some experiencing increases, and some remaining the same. This pattern is consistent with the fact that most coal-fired EGUs are in the CAIR region and therefore subject to regulations implementing the CAIR cap. According to the DOE's Energy Information Agency, for the years 2003–2004, approximately 80 percent of the coal steam electric generation and 75 percent of all electric generation occurred in CAIR States.[19] Furthermore, EGUs are subject to national SO_2 caps under the Acid Rain Program.

For these reasons, an increase in emissions in one area results in a decrease elsewhere. This dynamic occurs regardless of the major NSR applicability test for existing EGUs. Nonetheless, the NSR Availability Scenario demonstrates that this pattern continues to occur when increased availability is assumed, such as we assume for present purposes would occur under the proposed maximum hourly and 5-year baseline tests.

4. *SO_2 and NO_X Impact on Air Quality.* In Chapter 4 of the TSD, we compare projected county-level SO_2 and NO_X emissions under NSR Availability 4% to those projected under CAIR/CAMR/CAVR 2020. Projected increases in emissions of these pollutants due to increased hours of operation at EGUs under the NSR Availability (4%) Scenario are small in magnitude and sparse across the continental U.S. Therefore, we would expect these increases to cause minimal local ambient effect, both directly on SO_2 and NO_X emissions and as precursors to formation of $PM_{2.5}$ (SO_2 and NO_X emissions) and ozone (NO_X emissions). Because many counties experience decreases in emissions, we would further expect any local ambient effects from increased emissions to be somewhat diminished because of the emissions decreases elsewhere that yield regionwide improvements in air quality, including SO_2, NO_X, $PM_{2.5}$, and ozone. We expect similar outcomes with respect to the NSR Availability (2%) Scenario where the emissions changes are smaller and constitute a pattern of increases and decreases that is similar to that of the NSR Availability (4%) Scenario. Based on the spatial distribution of SO_2 and NO_X emissions changes as shown in the TSD, we would also expect patterns of air quality changes respectively under the NSR Availability (4%) Scenario to be consistent with projections under CAIR/CAMR/CAVR in 2020. We thus believe that the local air quality under this proposed regulations would be commensurate with that under the

[15] 15 FGD is flue gas desulfurization, also known as scrubbers, for control of SO_2 emissions.

[16] SCR is selective catalytic reduction, used for control of NO_X emissions.

[17] CAIR/CAMR/CAVR SO_2 and NO_X emissions available in Docket EPA–HQ–OAR–2005–0163, DCN 14. [EPA 219b_BART 13_2020_Pechan.xls]. NSR SO_2 and NO_X Availability Emissions available in Docket EPA–HQ–OAR–2005–0163, DCN 14. [EPA 219b_NSR_OAQPS_5_Pechan_2020.xls] National totals for CAIR/CAMR/CAVR and NSR Availability include new units (IPM new units and planned-committed units).

[18] CAIR/CAMR/CAVR SO2 and NO_X emissions available in Docket EPA–HQ–OAR–2005–0163, DCN 14. [EPA 219b_BART 13_2020_Pechan.xls]. NSR SO2 and NO_X Availability Emissions available in Docket EPA–HQ–OAR–2005–0163, DCN 14. [EPA 219b_NSR_OAQPS_5_Pechan_2020.xls].

[19] Available in Docket EPA–HQ–OAR–2005–0163, DCN 08. (2000–2004 Electric Generation).

CMAQ modeling based on CAIR/CAMR/CAVR 2020 Scenario emissions projections.[20] That is, we believe local air quality under these proposed regulations would be commensurate with air quality we are projecting for 2020 absent a change to the existing major NSR emissions increase test.

D. NSR Availability Scenarios—Discussion of $PM_{2.5}$, VOC, and CO Results

We used the NSR Availability Scenarios that we describe in Section III.B of this preamble to examine the $PM_{2.5}$, VOC, and CO emissions and air quality impacts of the proposed hourly emissions increase test. This Section provides the results of our analyses.

1. *$PM_{2.5}$, VOC, and CO Control Device Installation.* As we discuss in the $PM_{2.5}$ NAAQS RIA, our NEEDS indicates that as of 2004, 84 percent of all coal-fired EGUS have an ESP in operation, about 14 percent of EGUs have a fabric filter, and roughly 2 percent have wet $PM_{2.5}$ scrubbers.[21] Gas-fired turbines are clean burning and BACT/LAER for these EGUs is no control. BACT/LAER for VOC and CO is good combustion control. Furthermore, EGU owner/operators have natural incentives to reduce VOC and CO emissions. VOC and CO emissions are products of incomplete combustion. These compounds are discharged into the atmosphere when fuel remains unburned or is burned only partially during the combustion process. Fuel is a significant portion of total costs for EGUs, particularly for older EGUs where capital costs are paid off. EGU owner/operators have in fact improved combustion practices to increase combustion efficiency, thereby limiting unburned fuel. Cost effective operation is especially desirable in areas where a cap and trade program increases the cost of operation by creating a cost to pollute, as is the case in the CAIR region where most ozone and $PM_{2.5}$ nonattainment areas are located.

2. *$PM_{2.5}$, VOC, and CO National Emissions.* As Table 4 shows, EGUs contribute a small percentage of national $PM_{2.5}$, CO, and VOC emissions.[22]

TABLE 4.—EGU EMISSIONS AS PERCENT OF 2020 NATIONAL EMISSIONS (TPY)

Pollutant	EGU	National	EGU as % National
$PM_{2.5}$	533,000	6,206,000	8.6
VOC	45,000	12,414,000	0.4
CO	718,000	82,852,000	0.9

As Table 5 shows, the NSR Availability Scenarios project essentially no changes in $PM_{2.5}$, VOC, or CO emissions nationally by 2020 as compared to emissions under the CAIR/CAMR/CAVR Scenario.[23]

TABLE 5.—NATIONAL EGU EMISSIONS UNDER NSR AVAILABILITY SCENARIO COMPARED TO CAIR/CAMR/CAVR 2020 (TPY)

Pollutant	CAIR/CAMR/CAVR	NSR 4%	Change-NSR 4%
$PM_{2.5}$	526,642	524,245	(2,397)
VOC	45,020	45,391	371
CO	716,184	711,254	(4,930)

As described in Section III.B of this preamble, the NSR Availability Scenarios examine emissions changes based on very conservative estimates developed using actual historical hours of operation for 6,500 EGUs over the years 2000–2004. We conclude that to any extent that EGU hours of operation increase under a maximum hourly emissions increase test, as opposed to the current average annual 5-year baseline test, such increased hours of operation would not increase national EGU $PM_{2.5}$ and CO emissions. The increased availability would have very little effect on national VOC emissions, with less than half of a percent increase nationally. This conclusion as to emissions in the contiguous 48 States supports extending the proposed rules nationwide, instead of limiting them to the States in the CAIR region.

3. *$PM_{2.5}$, VOC, and CO Local Emissions Impact.* To examine the effect of the maximum hourly emission increase tests on local air quality, we compared 2020 county-level EGU $PM_{2.5}$, VOC, and CO emissions under the CAIR/CAMR/CAVR 2020 and NSR Availability (4%) Scenario.[24] We

[20] As we describe in more detail in the TSD, the CAIR/CAMR/CAVR modeling is available on our website and in the docket for this rulemaking. The CMAQ modeling was conducted as part of EPA's multipollutant legislative assessment and the results are available in the Multipollutant Regulatory Analysis: The Clean Air Interstate Rule, The Clean Air Mercury Rule, and the Clean Air Visibility Rule (EPA promulgated rules, 2005) at *http://www.epa.gov/airmarkets/progsregs/cair/multi.html.* The specific technical support document on air quality modeling for CAIR/CAMR/CAVR, Technical Support Document for EPA's Multipollutant Analysis; Methods for Projecting Air Quality Concentrations for EPA's Multipollutant Analysis of 2005, is available at *http://www.epa.gov/airmarkets/progsregs/cair/multi.html* by clicking on the Technical Support Document—Air Quality Modeling Technique used for Multi-Pollutant Analysis link. It is also available in Docket EPA–HQ–OAR–2005–0163, DCN 09. Information on ozone modeling is available at *http://www.epa.gov/airmarkets/progsregs/cair/multi.html* through the Air quality Modeling Results Excel File link. It is also available in Docket EPA–HQ–OAR–2005–0163, DCN 16.

[21] *See* the Regulatory Impact Analysis for 2006 NAAQS for Particle Pollution Chapter 3—Controls, page 34. Available at *http://www.epa.gov/ttn/ecas/ria.html* and in Docket EPA–HQ–OAR–2005–0163, DCN 10.

[22] CO emissions information from Clear Air Interstate Rule Emissions Inventory Technical Support Document, available at *http://www.epa.gov/interstateairquality/pdfs/finaltech01.pdf.* CO emissions rounded to nearest thousand ton level. Also available in Docket EPA–HQ–OAR–2005–0163, DCN 11. PM2.5 and VOC emissions information from PM2.5 NAAQS RIA, available at *http://www.epa.gov/ttn/ecas/ria.html.* Also available in Docket EPA–HQ–OAR–2005–0163, DCN 10.

[23] Emissions information available in Docket EPA–HQ–OAR–2005–0163, DCN 17. [NSR Availability $PM_{2.5}$, VOC, and CO] National totals for CAIR/CAMR/CAVR and NSR Availability include new units (IPM new units and planned-committed units).

[24] Available in Docket EPA–HQ–OAR–2005–0163, DCN 17. [NSR Availability $PM_{2.5}$, VOC, and CO].

describe these changes in detail in Chapter 4 of the TSD.

As Chapter 4 of the TSD shows, projected $PM_{2.5}$, VOC, and CO emissions changes under the proposed revised NSR applicability tests would result in a somewhat different pattern of local emissions, with some counties experiencing reductions, some experiencing increases, and some remaining the same compared to emissions changes under CAIR/CAMR/CAVR 2020.

4. *$PM_{2.5}$, VOC, and CO Impact on Air Quality.* As Chapter 4 of the TSD shows, projected increases in EGU $PM_{2.5}$, VOC, and CO emissions due to increased hours of operation at EGUs under the NSR Availability (4%) Scenario are small in magnitude and sparse across the continental U.S. Therefore, we would expect these increases to cause minimal changes in local ambient effect in comparison to that observed under CAIR/CAMR/CAVR for $PM_{2.5}$ and ozone (for which VOC is a precursor). Because many counties experience decreases in emissions, we would further expect any local ambient effects from increased emissions to be somewhat diminished because of the emissions decreases elsewhere that yield regionwide improvements in air quality.

We have not modeled national or regional air quality improvements in CO concentrations. As noted in Table 4, however, EGU CO emissions are less than one percent of national CO emissions. According to our latest analysis, 2020 national CO emissions are projected to be 19,892,017 tons less than 2001 national CO emissions.[25] Local CO emissions are generally a function of traffic congestion from mobile sources. For these reasons, EGUs do not contribute significantly to national or local CO emissions.

The projected increases in CO emissions due to increased hours of operation at EGUs under the NSR Availability (4%) Scenario are small in magnitude and sparse across the continental U.S. We would expect these increases to cause minimal local ambient effect on CO. Therefore, based on the small increases and sparse distribution of CO emissions compared to CAIR/CAMR/CAVR 2020, and the small contribution of EGU emissions to national and local CO levels, we project no notable local impact on air quality from EGU CO emissions from NSR Availability 4%.

E. NSR Efficiency Scenario.

We designed another IPM model run to evaluate whether efficiency improvements that sources may make as a result of these proposed regulations would lead to local emissions increases and adverse effects on ambient air quality. Aside from independent factors such as climate and economy, efficiency is a primary determinant of the hours of operation of a given EGU. Neither the current annual emissions increase test nor any of the proposed EGU emission increase test alternatives directly measure an EGU's efficiency. However, the output-based alternatives (Alternatives 2, 4, and 6), which are expressed in a lb/KWh format that measures mass emissions per unit of electricity, are closely related to an EGU's efficiency. Thus, an output-based test encourages efficient units, which has well-recognized benefits. We anticipate that the output-based alternatives in particular, and the other alternatives to a lesser extent, could have the effect of encouraging EGUs to increase their efficiency. For these reasons, we focused on efficiency to examine whether an hourly test could result in emissions increases as compared to the annual emissions increase test. We call this run the NSR Efficiency Scenario. We assumed the least efficient EGUs (approximately 35% of all EGUs) would increase their efficiency by 4 percent.

We ran the IPM with this scenario (4 percent efficiency increase for 371 coal-fired EGU, no increase in physical and operating existing capacity) and compared the results to the CAIR/CAVR/CAMR IPM model. We found approximately the same results from the NSR Efficiency Scenario as from the NSR Availability Scenarios. We describe the results of the NSR Efficiency analysis in detail in Chapter 5 of our TSD.

1. *Control Device Installation.* As Table 6 shows, the NSR Efficiency Scenario projects retrofitting of more control devices for SO_2 and NO_X than under the CAIR/CAMR/CAVR 2020.[26] These results are consistent with what IPM generally projects. The more efficient an EGU is, the more cost effective it is to operate. The more cost effective it is to operate, the more hours it will operate. The more hours it operates, the more likely it is to install controls.[27] We thus conclude that the more efficiently an EGU operates, the more likely it is to install controls, regardless of whether the major NSR applicability test is on an hourly basis or an annual basis with a 5-year baseline.

TABLE 6.—2020 NATIONAL EGUS WITH EMISSION CONTROLS-NSR EFFICIENCY

Emissions control type	EGUs with additional controls compared to 2004 controls case	EGUs with additional controls compared to CAIR/CAMR/CAVR 2020
FGD	109 GW	1.5 GW.
SCR	74 GW	1.0 GW.

2. *National Emissions.* As Table 7 shows, the NSR Efficiency Scenarios project reductions in SO_2 and NO_X emissions nationally by 2020 as compared to emissions under the Base Case Scenario.[28] This result is consistent with the fact that under the NSR Efficiency Scenario, the amount of controls increases, compared to the Base Case.

[25] See the Clean Air Interstate Rule Emissions Inventory Technical Support Document on pgs 7 and 38 at *http://www.epa.gov/cair/pdfs/finaltech01.pdf.* Also available in Docket EPA–HQ–OAR–2005–0163, DCN 11.

[26] Information from system summary report for the NSR Efficiency IPM Run. Available in Docket EPA–HQ–OAR–2005–0163, DCN 13 (System Summary Report for NSR Efficiency). CAIR/CAMR/CAVR emissions available in Docket EPA–HQ–OAR–2005–0163, DCN 14 [EPA 219b_BART 13_2020_Pechan].

[27] See our presentation, ''Contributions of CAIR/CAMR/CAVR to NAAQS Attainment: Focus on Control Technologies and Emission Reductions in the Electric Power Sector,'' on pages 39 and 43. The presentation is available at *http://www.epa.gov/cair/charts.html.* Also available in Docket EPA–HQ–OAR–2005–0163, DCN 05.

[28] CAIR/CAMR/CAVR SO_2 and NO_X emissions available in Docket EPA–HQ–OAR–2005–0163, DCN 14 [EPA 219b_BART 13_2020_Pechan]. NSR Efficiency SO_2 and NO_X Emissions available in Docket EPA–HQ–OAR–2005–0163, DCN 07 [EPA 219b_NSR_OAQPS_ 2a_Pechan_2020_(to EPA) 4–27–06]. NSR Efficiency $PM_{2.5}$, VOC and CO Emissions available in Docket EPA–HQ–OAR–2005–0163, DCN 18. National totals for CAIR/CAMR/CAVR and NSR Efficiency include new units (IPM new units and planned-committed units).

TABLE 7.—NATIONAL EGU EMISSIONS UNDER NSR EFFICIENCY SCENARIO COMPARED TO CAIR/CAMR/CAVR 2020 (TPY)

Pollutant	Total Emissions Under CAIR/CAMR/CAVR	Total Emissions Under NSR efficiency	Emissions Change Under NSR Efficiency Compared to CAIR/CAMR/CAVR
SO_2	4,277,000	4,265,000	−12,000
NO_X	1,989,000	1,984,000	−5,000
$PM_{2.5}$	526,642	529,647	3,005
VOC	45,019	44,835	−184
CO	716,184	711,314	−4,870

As noted above, the NSR Efficiency Scenarios examine emissions changes based on very conservative estimates of technically feasible improvements in efficiency. We conclude that to any extent that EGU efficiency increases under a maximum hourly emissions increase test, as opposed to the current average annual 5-year baseline test, such increased efficiency would not increase national EGU SO_2, NO_X, VOC, and CO emissions. The increased efficiency would have very little effect on national $PM_{2.5}$ emissions, with less than half of a percent increase nationally. This conclusion as to emissions in the contiguous 48 States supports extending the proposed rules nationwide, instead of limiting them to the States in the CAIR region.

3. *Local Emissions and Air Quality.* The NSR Efficiency Scenario projects a somewhat different pattern of local emissions compared to CAIR/CAMR/CAVR 2020. The NSR Efficiency Scenario projects decreases in many counties compared to CAIR/CAMR/CAVR 2020. Where there are projected increases in local SO_2, NO_X, $PM_{2.5}$, VOC, and CO emissions, they are small in magnitude and sparse across the continental United States. Therefore, we would expect these increases to cause minimal local ambient impact effect. We describe the NSR Efficiency Scenario analysis and its results in detail in Chapters 5 and 6 our TSD.

IV. Proposed Regulations for Option 1: Hourly Emissions Increase Test Followed By Annual Emissions Test

In the NPR, we did not propose to include, along with any of the revised NSR emissions tests, any provisions for computing a significant increase or a significant net emissions increase, although we solicited comment on retaining such provisions. Many commenters preferred to retain an annual emissions increase test in addition to the hourly emissions increase test. We are proposing Option 1, in which the hourly emissions increase test would be followed by the actual-to-projected-actual emissions increase test and the significant net emissions increase test in the current regulations. Specifically, changes that will not increase the hourly emissions rate-such as those to make repairs to reduce the number of forced outages-do not require further review under Option 1. However, if there would be an hourly emissions increase following a physical change or change in the method of operation, the proposed rule requires a determination of whether a significant increase or a significant net emissions increase would occur. Thus, Option 1 retains the netting provisions in the current regulations. Option 1 also facilitates improvements for efficiency, safety, and reliability, without adverse air quality effects (as the above discussion of the IPM and air quality analyses indicates).

We are proposing that Option 1 would apply to all EGUs. We are also requesting comment on whether Option 1 should be limited to the geographic area covered by CAIR, or to the geographic area covered by both CAIR and BART. We are also proposing that the Option 1 would apply to all regulated NSR pollutants. However, we also request comment on whether Option 1 should be limited to increases of SO_2 and NO_X emissions.

Under Option 1, the major NSR program would include a four-step process (with the second step revised as proposed, while retaining the other steps): (1) Physical change or change in the method of operation as in the current major NSR regulations; (2) hourly emissions increase test (maximum achieved hourly emissions rate or maximum achievable hourly emissions rate, each with output-based alternatives); (3) significant emissions increase as in the current major NSR regulations; and (4) significant net emissions increase as in the current major NSR regulations.

For a modification to occur under Option 1, under Step 1, a physical change or change in the method of operation must occur, and, under Step 2, that change must result in an hourly emissions increase at the existing EGU. If a post-change hourly emissions increase is projected, Option 1 retains the requirements for a significant emissions increase and a significant net emissions increase. In such cases, under Step 3, the owner/operator would determine whether an emissions increase would occur using the actual-to-projected-actual annual emissions test in the current regulations. There would be no conversion from annual to hourly emissions. Finally, in Step 4, as in the current regulations, if a significant emissions increase is projected to occur, the source would still not be subject to major NSR unless there was a determination that a significant net emissions increase would occur. Table 8 summarizes these four steps.

TABLE 8.—MAJOR NSR APPLICABILITY FOR EXISTING EGUS UNDER OPTION 1

Option 1	Step 1: Physical Change or Change in the Method of Operation. Step 2: Hourly Emissions Increase Test. • Alternative 1—Maximum achieved hourly emissions; statistical approach; input basis. • Alternative 2—Maximum achieved hourly emissions; statistical approach; output basis. • Alternative 3—Maximum achieved hourly emissions; one-in-5-year baseline; input basis. • Alternative 4—Maximum achieved hourly emissions; one-in-5-year baseline; output basis. • Alternative 5—NSPS test—maximum achievable hourly emissions; input basis.

TABLE 8.—MAJOR NSR APPLICABILITY FOR EXISTING EGUS UNDER OPTION 1—Continued

	• Alternative 6—NSPS test—maximum achievable hourly emissions; output basis. Step 3: Significant Emissions Increase Determined Using the Actual-to-Projected-Actual Emissions Test as in the Current Rules.[29] Step 4: Significant Net Emissions Increase as in the Current Rules.

Option 1 would not alter the provisions in the current major NSR regulations pertaining to a significant emissions increase and a significant net emissions increase. Therefore, the regulations would retain the definitions of net emissions increase, significant, projected actual emissions, and baseline actual emissions. [See § 51.166(b)(3), § 51.166(b)(23), § 51.166(b)(40), § 51.166(b)(47), and analogous provisions in 40 CFR 51.165, 52.21, 52.24, and appendix S to 40 CFR part 51.] The regulations would also retain all provisions in the current regulations that refer to major modifications, including, but not limited to, those in § 51.166(a)(7)(i) through (iii), (b)(9), (b)(12), (b)(14)(ii), (b)(15), (b)(18), (i)(1) through (9), (j)(1) through (4), (m)(1) through (3), (p)(1) through (7), (r)(1) through (7), and (s)(1) through (4) analogous provisions in 40 CFR 51.165, 52.21, 52.24, and appendix S to 40 CFR part 51.

We are also proposing regulatory language containing the two-step modification provisions. (Steps 1 and 2 of Option 1, as outlined in Table 8.) As we noted at 70 FR 61088, you can find the regulatory text defining ''modification'' within the NSPS general provision regulations at 40 CFR 60.2 and 60.14. Substantially mirroring CAA 111(a)(4), § 60.2 contains a general description of the two components an activity must satisfy to qualify as a modification. § 60.14 elaborates on the general description contained in § 60.2 by more precisely defining how you measure the amount of pollution that results from an activity, and listing activities that do not qualify as physical changes or changes in the method of operation. (that is, the ''increases'' component of the modification definition, or Step 2.) As we proposed at 70 FR 61090, we have added a definition of modification in § 51.167, which mirrors the provisions in § 60.2. We are also proposing to add requirements defining the ''increases'' component of ''modification'' to the major NSR rules, analogous to the provisions in § 60.14. Specifically, the definition of modification in the proposed rules requires that an increase in the amount of regulated NSR pollutants must be determined according to the provisions in paragraph (f) of § 51.167. Under Option 1, Alternatives 1–4, we are proposing to define the ''increases'' component to mean maximum hourly emissions rate achieved. That is, if a physical change or change in the method of operation (as defined under existing regulations, which we are not proposing to change) is projected to result in an increase in the maximum hourly emissions rate expected to be achieved over the maximum hourly emissions rate actually achieved at the EGU prior to the change, a modification would occur. The requirements for the maximum achieved alternatives are in proposed § 51.167(f)(1), Alternatives 1–4. Under Option 1, Alternatives 5 and 6, we are proposing to define the ''increases'' component to mean maximum achievable hourly emissions. For maximum achievable hourly emissions on an input basis, we are proposing to add a definition of the ''increases'' component of ''modification'' that substantially mirrors the definition of the ''increases'' component of ''modification'' in the NSPS provisions, which is found in 40 CFR 60.2. These requirements are in proposed § 51.167(f)(1), Alternative 5. For the maximum achievable alternative on an output basis (Alternative 6), the requirements are in proposed § 51.167(f)(1), Alternative 6.

To incorporate the two-step modification provisions under Option 1, we are proposing to add two new sections to the major NSR program rules. The first, 40 CFR 51.167, would specify the requirements that State Implementation Plans must include for major NSR applicability at existing EGUs, including those for both attainment and nonattainment areas. (Proposed rule language for 40 CFR 51.167 accompanies this SNPR.) The second, 40 CFR 52.37, would contain the requirements for major NSR applicability for existing EGUs where we are the reviewing authority. Although the proposed amendatory language is for 40 CFR 51.167, we are proposing that the same requirements would apply under 40 CFR 52.37, differing only in that the Administrator is the reviewing authority, rather than the State, local, or tribal agency. Although this notice does not contain specific regulatory language, we are proposing that either 40 CFR 51.167 or 40 CFR 52.37, as appropriate, would contain the requirements for emissions increases at EGUs for all sections of the Code of Federal Regulations that contain the major NSR program, including 40 CFR 51.165, 51.166, 52.21, 52.24, and appendix S of 40 CFR part 51, as well as any regulations we finalize to implement major NSR in Indian Country. We are also proposing to make the same changes where necessary to conform the general provisions in parts 51 and 52 to the requirements of the major NSR program, such as in the definition of modification in 40 CFR 52.01. In addition, we are proposing to remove all applicability requirements for existing EUSGUs in all sections of the CFR that contain the major NSR program, as the EGU requirements would supersede these requirements.

In the NPR, we proposed three alternatives for the hourly emissions increase test-the NSPS maximum achievable hourly emissions test, maximum achieved hourly emissions, and an output-based measure of hourly emissions. As some commenters noted, we did not give much detail about the output-based measure of hourly emissions. In this SNPR, we are recasting what we proposed in the NPR for the output-based methodology. In this SNPR, both the maximum achieved hourly emissions test and the maximum achievable hourly emissions test include output-based alternatives. Specifically, we are proposing two broad approaches under Option 1: (1) A maximum achieved hourly emissions test; and (2) a maximum achievable hourly emissions test. If we adopt the maximum achieved hourly emissions test, we may require that it be expressed in an input-based format (lb/hr) or an output-based format (lb/MWh). Alternatively, and as we did in our recently promulgated NSPS for combustion turbines (40 CFR part 60, subpart KKKK, July 6, 2006), we may also adopt both an input and output based format. If we adopt both formats, sources, at their choice, would be able to implement the hourly emissions test in either input-or output-based formats. Likewise, if we adopt the maximum achievable hourly emissions test, it may be expressed in an input-based format

[29] Steps 3 and 4 only apply when a unit fails Step 2. (That is, it is determined that an hourly emissions increase would occur.)

(lb/hr), an output-based format (lb/MWh), or both. We are also proposing two methods for computing maximum achieved emissions: (1) Statistical approach; and (2) one-in-5-year baseline. In terms of the regulatory language that accompanies this notice, we are proposing six alternatives for determining whether a physical or operational change at an EGU is a modification. These alternatives are summarized in Table 9 and can be found at proposed § 51.167(f)(1).

In Sections IV.A and B below, we describe our two approaches for the hourly emissions increase test in more detail. The regulatory language proposed for these approaches (that is, maximum achieved and maximum achievable hourly emissions increase tests) would apply under both Option 1 and Option 2. Option 2, as described below in Section V, would eliminate the significance and netting steps that are included under current applicability regulations, whereas Option 1 would not eliminate the significance and netting steps. This action includes proposed rule language for Option 1.

A. Test for EGUs Based on Maximum Achieved Emissions Rates

As one approach, we are proposing that the hourly emissions increase test would be based on an EGU's historical maximum hourly emissions rate. We call this approach the maximum achieved hourly emissions test. Under this approach, an EGU owner/operator would determine whether an emissions increase would occur by comparing the pre-change maximum actual hourly emissions rate to a projection of the post-change maximum actual hourly emissions rate. We request comment on all alternatives for the maximum achieved hourly emissions increase test (see proposed Alternatives 1 through 4 for § 51.167(f)(1)), as well as on other possible approaches for determining maximum achieved hourly emissions. In particular, we request comments on whether the proposed maximum achieved methodologies would account for variability inherent in EGU operations and air pollution control devices.

1. *Determining the Pre-Change Emissions Rate.* The pre-change maximum actual hourly emissions rate would be determined using the highest rate at which the EGU actually emitted the pollutant within the 5-year period immediately before the physical or operational change. Thus, the maximum achieved emissions test is based on specific measures of actual historical emissions during a representative period.

We are proposing four alternatives for determining the pre-change maximum hourly emissions rate actually achieved, which we denote here and in the proposed rule language as Alternatives 1 through 4. As shown above in Table 9, these alternatives consist of two different methods for determining the pre-change maximum emissions rate (*i.e.*, the statistical approach and the one-in-5-year baseline approach), each of which can be applied on an input (lb/hr) basis or output (lb/MWh) basis. In addition to these four alternatives, which are included in the proposed rule language at § 51.167(f)(1), we are proposing that the source would have a choice of implementing the test on either an input-or output-basis.

Proposed Alternatives 1 and 2 (input basis and output basis, respectively) utilize a statistical approach for you to use to analyze continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) data from the 5 years preceding the physical or operational change to determine the maximum actual pollutant emissions rate. The statistical approach utilizes actual recorded data from periods of representative operation to calculate the maximum actual emissions rate associated with the pre-change maximum actual operating capacity in the past 5 years. The maximum actual emissions rate is expressed as the upper tolerance limit (UTL). The UTL concept and equations are derived from work conducted by the National Bureau of Standards (now the National Institute of Standards and Technology (NIST)).[30]

In conducting the analysis, you would select a period of 365 consecutive days from the 5 years preceding the change. Next, you would compile a data set (for example, in a spreadsheet) for the pollutant of interest with the hourly average CEMS or PEMS (as applicable) measured emissions rates (in lb/hr for Alternative 1, or lb/MWh for Alternative 2) and corresponding heat input data for all of the EGU operating hours in that period. From that data set, you would delete selected hourly data from this 365-day period in accordance with certain data limitations. Specifically, you would delete data from periods of startup, shutdown, and malfunction; periods when the CEMS or PEMS was out of control (as described below); and periods of noncompliance, according to proposed § 51.167(f)(2) as explained below in Section IV.A.3 on data limitations.

The next step in the procedure is to sort the data set for the remaining operating hours by heat input rates. You would then extract the hourly data for the 10 percent of the data set corresponding to the highest heat input rates for the selected period. The next step is to apply basic statistical analyses to the extracted CEMS or PEMS hourly emissions rate data, calculating the average emissions rate, the standard deviation, and finally the UTL. See the proposed rule language for Alternatives 1 and 2 at § 51.167(f)(1) for the specifics of the calculations. As included in the proposed rule, Alternatives 1 and 2 calculate the UTL for the 99.9th percentile of the population (of hourly emissions rate readings) at the 99 percent confidence level. That is, under the proposed methodology we would expect, with a 99 percent confidence level, 99.9 percent of the hourly emissions rate data to be less than the UTL value. We are also proposing a 90 percentile of the population (of hourly emissions rate readings). We request comment on these proposed levels. In particular we request comment on whether a 99 or 90 percentile of the population (of hourly emissions rate readings) would be more appropriate. We also request comment on whether a 95 or 90 percent confidence level would be more appropriate.

Alternatives 1 and 2 focus on EGU emissions during periods of representative operation at the greatest actual operating capacity of the unit, as demonstrated over the preceding 5 years (that is, the capacity that the unit actually utilized in the preceding 5 years). We believe that this is appropriate for a test with the purpose of, essentially, determining whether a physical or operational change increases the capacity of the unit, or the capacity utilization of the unit, over that achieved in the past 5 years. We further believe that the statistical approach properly accounts for the variability inherent in EGU operations and air pollution control technology. This approach helps to ensure that the emissions from an EGU will not exceed its pre-change maximum achieved hourly emissions rate simply through the random variability of the system, when a change has not expanded the capacity of the unit. Thus, the statistical approach utilizes actual recorded data from periods of representative operation to calculate the maximum actual hourly emissions rate in the past 5 years. We expect that for the most part, this rate will be associated with the pre-change

[30] Mary Gibbons Natrella (1963). ''Experimental Statistics,'' NBS Handbook 91, U.S. Department of Commerce. This work is available on the Internet at *http://www.itl.nist.gov/div898/handbook/prc/section2/prc263.htm.*

maximum actual operating capacity during this period.

Because Alternatives 1 and 2 can be used only if one has CEMS or PEMS data, we cannot adopt these alternatives alone. That is, if we elect to include either or both of these alternatives in the final rule, we will also finalize another alternative to be used for emissions of any regulated NSR pollutants that a source does not measure directly with a CEMS or PEMS.

While we believe that the statistical approach would be best applied to hourly emissions data from the periods of highest heat input rates, we also propose and request comment on the option of sorting and extracting data based on the hourly emissions rate itself in lb/hr or lb/MWh, as applicable. In this alternative method for conducting the statistical approach, you would compile a data set in the same manner as in Alternatives 1 and 2. As in Alternatives 1 and 2, you would delete selected hourly data from this 365-day period in accordance with the same data limitations. Specifically, you would delete data from periods of startup, shutdown, and malfunction; periods when the CEMS or PEMS was out of control (as described below); and periods of noncompliance, as defined in proposed § 51.167(f)(2). However, the data would then be sorted by the recorded hourly average emissions rates, rather than by heat input rates. You would then extract the hourly data for the 10 percent of the data set corresponding to the highest hourly emissions rate readings for the selected period. You would next apply basic statistical analyses to the extracted CEMS or PEMS hourly emissions rate data, calculating the average emissions rate, the standard deviation, and finally the UTL. Under this alternate statistical method based on recorded hourly emissions rates, we are proposing a 99.9 percentile of the population (of hourly emissions rate readings) at a 99 percent confidence level. That is, under the proposed methodology we would expect, with a 99 percent confidence level, 99.9 percent of the hourly emissions rate data to be less than the UTL value. We are also proposing a 90 percentile of the population (of hourly emissions rate readings). We request comment on these proposed levels. In particular we request comment on whether a 99 or 90 percentile of the population (of hourly emissions rate readings) would be more appropriate. We also request comment on whether a 95 or 90 percent confidence level would be more appropriate.

Proposed Alternatives 3 and 4 for determining the pre-change maximum actual emissions rate use the highest emissions rate (in lb/hr and lb/MWh, respectively) actually achieved for any hour within the 5-year period immediately before the physical or operational change. That is, the pre-change maximum emissions rate could be an emissions rate that was actually achieved for only 1 hour in the 5-year period.

Under Alternatives 3 and 4, the highest hourly emissions rate would be determined based on historical actual emissions. You must determine the highest pre-change hourly emissions rate for each regulated NSR pollutant using the best data available to you. You must use the highest available source of data in the hierarchy presented below, unless your reviewing authority has determined that a data source lower in the hierarchy will provide better data for your EGU:

- Continuous emissions monitoring system.
- Approved PEMS.
- Emission tests/emission factor specific to the EGU to be changed.
- Material balance.
- Published emission factor (such as AP–42).

Under this hierarchy, most EGUs will use CEMS to measure the highest hourly SO_2 and NO_X emissions. Some EGUs are currently equipped with CEMS to measure CO, and would thus use CEMS to measure historical hourly CO emissions. For other pollutants, we anticipate most EGUs would measure historical actual emissions using emission tests, site-specific emission factors, or mass balances (where applicable). We request comment on appropriate measures of historical actual emissions for all regulated NSR pollutants for all EGUs. In particular, we request comment on appropriate measures of historical actual emissions of CO, VOC, and lead, as turbines may not have significant emissions of these regulated NSR pollutants. We also request comment on whether emission factors that are not site-specific, such as those in AP–42, would be appropriate measures of historical actual emissions.

As discussed above, proposed Alternatives 1 and 3 provide specific proposed rule language for the input-based (lb/hr) alternatives. Proposed Alternatives 2 and 4 provide specific proposed rule language for the output-based (lb/MWh) alternatives, largely repeating the proposed language for Alternatives 1 and 3, respectively. For purposes of the output-based alternatives, the proposed language for their input-based counterparts is adjusted in the following ways:

- Emissions rates would be expressed in terms of lb/MWh, rather than lb/hr.
- For EGUs that are cogeneration units, emissions rates would be determined based on gross energy output. For other EGUs, emissions rates would be determined based on gross electrical output.
- Actual and projected emissions rates in lb/MWh would be determined over a 1-hour averaging period (that is, a period of one hour of continuous operation, rather than an instantaneous spike).

We are proposing a gross output basis for this test, rather that net output, due to the difficulties involved in determining net output. This gross output basis is consistent with our recent revisions to the NSPS for EUSGUs (40 CFR part 60, subpart Da; 71 FR 9866) and stationary combustion turbines (40 CFR part 60, subpart KKKK; 71 FR 38487).

For the output-based alternatives, we propose to cite the definitions in the CAIR rule at § 51.124(q) for the definitions of ''cogeneration unit'' and numerous other terms used in that definition. We propose to include definitions in § 51.167(h)(2) of this rule for ''gross electrical output'' and ''gross energy output.'' We propose to add definitions for ''gross power output'' and ''useful thermal energy output,'' which are terms used in the proposed definition of ''gross energy output.'' We invite comment on the output-based approach in general, the proposed output-based alternatives, and the related definitions we are proposing.

2. *Determining the Post-Change Emissions Rate*. We are proposing the same approach to post-change emissions for Alternatives 1 through 4. Specifically, for each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve in any 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual hourly emissions rate exceeds the pre-change maximum actual hourly emissions rate. Regardless of any preconstruction projections, you must treat an emissions increase as occurring if the emissions rate actually achieved in any 1 hour during the 5 years after the change exceeds the pre-change maximum actual hourly emissions rate.

3. *Data Limitations in Determining Emissions Rates*. We are proposing four limitations on the data used to determine pre-change and post-change maximum emissions rates under the

maximum achieved hourly emissions test (see proposed § 51.167(f)(2)(i)). The proposed limitations are identical for Alternatives 1 through 4. For purposes of determining maximum emissions rates under the maximum achieved test, we propose that you must not include the following types of data in your calculations:

- Emissions rate data associated with startups, shutdowns, or malfunctions of your EGU, as defined by applicable regulation(s) or permit term(s), or malfunctions of an associated air pollution control device. A malfunction means any sudden, infrequent, and not reasonably preventable failure of the EGU or the air pollution control equipment to operate in a normal or usual manner.
- CEMS or PEMS data recorded during monitoring system out-of-control periods. Out-of-control periods include those during which the monitoring system fails to meet quality assurance criteria (for example, periods of system breakdown, repair, calibration checks, or zero and span adjustments) established by regulation, by permit, or in an approved quality assurance plan.
- Emissions rate data from periods of noncompliance when your EGU was operating above an emission limitation that was legally enforceable at the time the data were collected.
- Data from any period for which the information is inadequate for determining emissions rates, including information related to the limitations listed above.

The first two of these limitations are based on requirements of the NSPS General Provisions in subpart A of part 60. The prohibition of data from periods of startup, shutdown, and malfunction is found in the section on performance tests, specifically § 60.8(c), which states, in pertinent part:

> Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

The principle set out in this paragraph is that emissions during periods of startup, shutdown, and malfunction are not representative and typically should not figure into emission calculations. We propose to apply this principle to all data required to comply with the requirements in this action, and not limit it to performance test data. We do not believe that emissions during startup, shutdown, or malfunction are a reasonable basis for determining whether a physical or operational change at an EGU would result in an hourly emissions increase. It is more appropriate to focus on emissions during normal operations, which are expected to correlate more closely with the actual operating capacity of the EGU than would emissions during periods of startup, shutdown, or malfunction. The proposed rule language also expands slightly on the language of § 60.8(c) to clarify the meanings of startup, shutdown, and malfunction in the context of this action.

The second data limitation reflects § 60.13(h), which states that ''data recorded during periods of continuous system breakdown, repair, calibration checks, and zero and span adjustments shall not be included in data averages computed under this paragraph.'' We do not believe that this type of unrepresentative CEMS or PEMS data, which may bear no relationship to actual emissions, should be included in calculations of maximum achieved emissions rates. The proposed rule language refers to and defines ''monitoring system out-of-control periods,'' in keeping with more current terminology for monitoring systems.

The third proposed data limitation listed above would prohibit the use of emissions rate data from periods of noncompliance when your EGU was operating above an emission limitation that was legally enforceable at the time the data were collected. This reflects existing requirements under the major NSR program, specifically the definition of ''baseline actual emissions'' that is used in the actual-to-projected-actual applicability test. (See, for example, § 51.166(b)(47)(i)(b).)

The fourth proposed data limitation reflects existing requirements under the major NSR program, again in the definition of ''baseline actual emissions'' that is used in the actual-to-projected-actual applicability test. (See, for example, § 51.166(b)(47)(i)(d).) This limitation would preclude the use of data from periods where there is inadequate information for determining emissions rates, including information related to the other three data limitations. This provision is simply intended to ensure that you generate reliable, defensible values for pre-change and post-change emissions rates.

4. *Recordkeeping and Reporting Requirements*. Under proposed Alternatives 1 through 4, an emissions increase has occurred if the emissions rate actually achieved in any one hour during the 5 years after the change exceeds the pre-change maximum actual hourly emissions rate (see, for example § 51.167(f)(1)(iii) under Alternative 1). Most EGUs are already reporting hourly SO_2 and NO_X emissions through CEMS data to EPA as part of their requirements under the Acid Rain program and will continue to be required to do so under the CAIR. The Acid Rain and CAIR programs also require recordkeeping and reporting for EGUs not using CEMS, such that hourly emissions. $PM_{2.5}$, VOC, and CO emissions can be computed from SO_2 and NO_X emissions data. Therefore, emissions increases of regulated NSR pollutants will be transparent to the Agency and to the public. However, we request comment on whether additional recordkeeping and reporting requirements for post-change emissions should be required where EGUs are not using CEMS to measure emissions.

B. Test for EGUs Based on Maximum Achievable Emissions Rates

As we stated in our October 2005 NPR (70 FR 61090), we are proposing to allow existing EGUs to use the same maximum achievable hourly emissions test applied in the NSPS to determine whether a physical or operational change results in an emissions increase under the major NSR program. This test is based on a comparison of pre-change and post-change emissions rates in pounds per hour (lb/hr).[31] We are proposing an additional variation on the NSPS test, which would compare pre-change and post-change achievable emissions rates in pounds per megawatt-hour (lb/MWh). In the discussion that follows and in the proposed rule language, we refer to these two approaches as Alternatives 5 and 6, respectively.

1. *Determining Pre-Change and Post-Change Emissions Rates*. Under Alternative 5, the major NSR regulations would apply at an EGU if a physical or operational change results in any increase above the maximum hourly emissions achievable at that unit during the 5 years prior to the change. Under this alternative, we are proposing to incorporate provisions similar to those in § 60.14(h) into the new § 51.167(f) (1). We propose that this regulatory language would substantially mirror, but would not be identical to, § 60.14(h). As with the definition of modification that we are proposing for § 51.167(h) (2), there are differences between the two

[31] In the NSPS regulations, emissions rates are compared in terms of kilograms per hour. We use English units in this proposed rulemaking in keeping with longstanding practice in the major NSR program, where annual emissions are generally computed using the lb/hr rate and hours of operation.

programs that prevent a wholesale adoption of the NSPS modification provisions of § 60.14(h). Specifically, our proposed rule language addresses the full range of pollutants regulated under the major NSR program by referring to the ''regulated NSR pollutants,'' while the NSPS provisions limit the analysis to those pollutants regulated under an applicable NSPS. Also, as we previously explained at 70 FR 61090, we are proposing that the emissions increase test would apply to EGUs, rather than to EUSGUs. Under Alternative 5, § 51.167(f) (1) would read as follows:

Emissions increase test. For each regulated NSR pollutant, compare the maximum achievable hourly emissions rate before the physical or operational change to the maximum achievable hourly emissions rate after the change. Determine these maximum achievable hourly emissions rates according to § 60.14(b) of this chapter. No physical change, or change in the method of operation, at an existing EGU shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any regulated NSR pollutant above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

As stated in this proposed rule language, pre-change and post-change hourly emissions rates would be determined according to the NSPS provisions in § 60.14(b). That is, hourly emissions increases would be determined using emission factors, material balances, continuous monitor data, or manual emission tests.

Alternative 6 is also based on the NSPS ''maximum achievable'' test, but is modified to an energy output (lb/MWh) basis. Under Alternative 6, § 51.167(f) (1) would read as follows:

Emissions increase test. For each regulated NSR pollutant, compare the maximum achievable emissions rate in pounds per megawatt-hour (lb/MWh) before the physical or operational change to the maximum achievable emissions rate in lb/MWh after the change. Determine these maximum achievable emissions rates according to § 60.14(b) of this chapter, using emissions rates in lb/MWh achievable over 1 hour of continuous operation in place of mass emissions rates. For EGUs that are cogeneration units, determine emissions rates based on gross energy output. For other EGUs, determine emissions rates based on gross electrical output. No physical change, or change in the method of operation, at an existing EGU shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum emissions rate of any regulated NSR pollutant above the maximum emissions rate achievable at that unit during the 5 years prior to the change.

To maintain an hourly basis for the emissions rate, the proposed language specifies that the maximum achievable emissions rate in lb/MWh is to be determined based on what is achievable over 1 hour of continuous operation (that is, a 1-hour averaging period rather than an instantaneous spike). In addition, as noted above in the discussion of the output-based alternatives under the maximum achieved hourly emissions test (Alternatives 2 and 4), we propose to cite the definition in the CAIR rule at § 51.124(q) for the definitions of ''cogeneration unit'' and related terms. We propose to include definitions in § 51.167(h) (2) of this rule for ''gross electrical output,'' ''gross energy output,'' ''gross power output,'' and ''useful thermal energy output.''

2. *Data Limitations in Determining Emissions Rates.* We are proposing three limitations on the data used to calculate the pre-change and post-change emissions rates under the maximum achievable hourly emissions test (see proposed § 51.167(f) (2) (ii)). The proposed limitations are identical for Alternatives 5 and 6. For purposes of determining maximum emissions rates under the maximum achievable test, we propose that you must not use the following types of data in your calculations:

- Emissions rate data associated with startups, shutdowns, or malfunctions of your EGU, as defined by applicable regulation(s) or permit term(s), or malfunctions of an associated air pollution control device. A malfunction means any sudden, infrequent, and not reasonably preventable failure of the EGU or the air pollution control equipment to operate in a normal or usual manner.
- CEMS or PEMS data recorded during monitoring system out-of-control periods. Out-of-control periods include those during which the monitoring system fails to meet quality assurance criteria (for example, periods of system breakdown, repair, calibration checks, or zero and span adjustments) established by regulation, by permit, or in an approved quality assurance plan.
- Data from any period for which there is inadequate information for determining emissions rates, including information related to the limitations listed above.

These proposed data limitations are the same as three of the four data limitations that we are proposing for the maximum achieved tests (Alternatives 1 through 4). See Section IV.A.3. above for the discussion of these three data limitations.

3. *Recordkeeping and Reporting for Hourly Emissions.* We are proposing the same recordkeeping and reporting approach for the maximum achievable test (Alternatives 5 and 6) that we propose for the maximum achieved hourly emissions test (Alternatives 1 through 4). We describe our approach in Section IV.A.4 of this preamble.

V. Proposed Regulations for Option 2: Hourly Emissions Increase Test

This section contains details on the proposed regulatory language for Option 2, the hourly emissions increase test. We are proposing that Option 2 would apply to all existing EGUs. As we noted at 70 FR 61093, however, we are also requesting comment on whether Option 2 should be limited to the geographic area covered by CAIR, or to the geographic area covered by both CAIR and BART. We are also proposing that the Option 2 would apply to all regulated NSR pollutants. However, we also request comment on whether Option 2 should be limited to increases of SO_2 and NO_X emissions.

In this SNPR, for Option 2 we are proposing to exempt EGUs from the procedures in the current regulations for determining a significant emissions increase and a significant net emissions increase. Specifically, we are proposing to exempt EGUs from the applicability procedures based on a significant emissions increase and significant net emissions increase in the current regulations at 40 CFR 51.165, 51.166, 52.21, and 52.24 and in appendix S to 40 CFR part 51. That is, we are proposing to amend each of these sections to exempt EGUs from all provisions for significant emissions increases and significant net emission increases. For example, under Option 2 the provisions for determining a significant emissions increase and a significant net emissions increase in § 51.166(a) (7) (iv)(a) would be amended to exempt EGUs as follows.

(a) Except for EGUs as defined in § 51.167(h)(1) of this Subpart, and except as otherwise provided in paragraphs (a)(7)(v) and (vi) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(39) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it dos not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

We are proposing to amend all other provisions for significant emissions increase and significant net emissions increase in the current regulations at 40 CFR 51.165, 51.166, 52.21, and 52.24 and in appendix S to 40 CFR part 51 in an analogous manner to exempt EGUs.

In place of the applicability procedures in the current regulations concerning significant emissions increase and significant net emissions increase, Option 2 applies an hourly emissions increase test to EGUs. We describe these as Steps 1 and 2, which comprise the two-step modification test and are the same as under Option 1, in Section IV of this preamble. As with Option 1, under Option 2, we are proposing to develop two new sections (40 CFR 51.167 and 52.37) to the major NSR program rules that would include the two-step provisions for modifications at EGUs. Thus, the amendatory language in this action applies to Option 2 as it relates to Steps 1 and 2. That is, under Option 2, EGUs would be subject to the new two-step requirements for modifications. They would not be subject to the requirements in the existing regulations for major modifications.

Alternatives 1–6, comprising Step 2 of Option 2, are the same as under Option 1. We describe these alternatives in detail above in Section IV of this preamble. Table 10 shows Option 2, including Alternatives 1–6.

TABLE 9.—MAJOR NSR APPLICABILITY FOR EXISTING EGUS UNDER OPTION 2

Option 2	Step 1: Physical Change or Change in the Method of Operation. Step 2: Hourly Emissions Increase Test. • Alternative 1—Maximum achieved hourly emissions; statistical approach; input basis. • Alternative 2—Maximum achieved hourly emissions; statistical approach; output basis. • Alternative 3—Maximum achieved hourly emissions; one-in-5-year baseline; input basis. • Alternative 4—Maximum achieved hourly emissions; one-in-5-year baseline; output basis. • Alternative 5—NSPS test—maximum achievable hourly emissions; input basis. • Alternative 6—NSPS test—maximum achievable hourly emissions; output basis.

Under Option 2, if a physical or operational change at an existing EGU is found to be a modification according to this hourly emissions test, the EGU would then be subject to all the substantive major NSR requirements of the existing regulations. Accordingly, we are also proposing to revise the substantive provisions in all the current major NSR regulations that apply to major modifications to apply also to modifications at EGUs. The amendatory language in this proposed rule does not include specific provisions for these changes. The substantive provisions to be amended would include, but not be limited to, the provisions in § 51.166(a)(7)(i) through (iii), (b)(9), (b)(12), (b)(14)(ii), (b)(15), (b)(18), (i)(1) through (9), (j)(1) through (4), (m)(1) through (3), (p)(1) through (7), (r)(1) through (7), and (s)(1) through (4). For example, we are proposing to amend § 51.166(a)(7)(iii) as follows.

(iii) No new major stationary source, major modification, or modification at an EGU to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source, major modification, or modification at an EGU will meet those requirements.

We are proposing to amend all other provisions in the current regulations at 40 CFR 51.165, 51.166, 52.21, and 52.24 and in appendix S to 40 CFR part 51 in an analogous manner to require that the substantive provisions in all the current major NSR regulations apply to modifications at EGUs.

VI. Legal Basis and Policy Rationale

This section supplements the legal arguments in our October 2005 proposal. (70 FR 70565.) In that action, we provided our legal basis and rationale for the proposed maximum achievable hourly emissions test and our alternative proposal, the maximum achieved hourly emissions test. We noted that the key statutory provisions provide, in relevant part, that a ''modification'' that triggers NSR occurs when a physical change or change in the method of operation ''increases the amount of any air pollutant emitted'' by the source. Although the Court in *New York* v. *EPA* held that the quoted provision refers to increases in actual emissions, the Court further indicated that the statute was silent as to the method for determining whether increases occur.

When a statute is silent or ambiguous with respect to specific issues, the relevant inquiry for a reviewing court is whether the Agency's interpretation of the statutory provision is permissible. *Chevron U.S.A., Inc.* v. *NRDC, Inc.* 467 U.S. 837, 865 (1984). Accordingly, we have broad discretion to propose a reasonable method by which to calculate emissions increases for purposes of NSR applicability.

This action continues to propose both the maximum achievable hourly emissions increase test and the maximum achieved hourly emissions increase test. We set forth legal basis and rationale in the NPR for these two tests. In this SNPR, however, we provide additional legal and policy basis for the hourly emissions increase tests, on both an input and output basis.

We believe that a test based on maximum actual hourly emissions is a reasonable measure of actual emissions. It measures actual emissions at peak, or close to peak, physical and operational capacity. For reasons described elsewhere, and summarized below, we believe this approach implements sound policy objectives.

As we noted at 70 FR 61091, we believe that a test based on maximum achievable hourly emissions remains a test based on actual emissions. The reason is that, as noted in the October 2005 proposal, as a practical matter, for most, if not all EGUs, the hourly rate at which the unit is actually able to emit is substantively equivalent to that unit's historical maximum hourly emissions. That is, most, if not all EGUs will operate at their maximum actual physical and operational capacity at some point in a 5-year period. In general, highest emissions occur during the period of highest utilization. As a result, both the maximum achievable and maximum achieved hourly emissions increase tests allow an EGU to utilize all of its existing capacity, and in this aspect the hourly rate at which the unit is actually able to emit is substantively equivalent under both tests.

Some commenters took issue with this statement, arguing that maximum achievable emissions could differ from maximum achieved emissions for a given EGU for any given period as a result of factors independent of the physical or operational change, including variability of the sulfur content in the coal being burned.

We have long recognized that the highest hourly emissions do not always occur at the point of highest capacity utilization, due to fluctuations in process and control equipment operation, as well as in fuel content and firing method. In fact, we justified an emission factor approach as our preferred approach when we proposed the NSPS regulations at § 60.14 in 1974. (See 39 FR 36947.) As we also noted in developing these NSPS provisions for modifications, ''measurement techniques such as emission tests or continuous monitors are sensitive to routine fluctuations in emissions, and thus a method is needed to distinguish between significant increases in emissions and routine fluctuations in emissions.'' (39 FR 36947.) At that time, we proposed a statistical method for use with stack tests and continuous monitors to measure actual emissions to address this issue.

In light of these concerns, we developed a statistical approach for the maximum achieved hourly emissions increase test to assure that it identifies the maximum hourly pollutant emissions value (for example maximum lb/hr NO_X during a specific one-year period). The statistical procedure would provide an estimate of the highest value (99.9 percentage level) in the period represented by the data set. We believe that this approach mitigates some of the uncertainty associated with trying to identify the highest hourly emissions rate at the highest capacity utilization.[32] We thus believe that, over a period that is representative of normal operations, in general the maximum achievable and maximum achieved hourly emissions test would lead to substantially equivalent results.

Each of these proposed options would promote the safety, reliability, and efficiency of EGUs. Each of the options would balance the economic need of sources to use existing operating capacity with the environmental benefit of regulating those emission increases related to a change, considering the substantial national emissions reductions other programs have achieved or will achieve from EGUs. The proposed regulations are consistent with the primary purpose of the major NSR program, which is to balance the need for environmental protection and economic growth. As the analyses included in this SNPR demonstrate, the proposed regulations would not have an undue adverse impact on local air quality. Furthermore, as our analyses demonstrate, increases in hours of operation at EGUs, to the extent they may change under a maximum hourly rate test, do not increase national SO_2, NO_X, $PM_{2.5}$, VOC, or CO emissions. Consistent with earlier analyses, our analyses demonstrate that in a system where most of the national emissions are capped, the more hours an EGU operates, the more likely it is to install controls.

Moreover, each of the proposed options also offers additional benefits consistent with our overall policy goals. Option 1 would simplify major NSR for changes where there is no increase in hourly emissions. However, many public commenters urged that we retain the significant emissions increase component of the emissions increase test. Therefore, we propose Option 1, our preferred Option, for the purpose of maintaining the current significant net emissions increase component of the emissions increase test.

Option 2 with the proposed maximum hourly tests would simplify major NSR by reducing applicability determinations complexity. Option 2 with the proposed maximum hourly achievable test provides more simplicity by conforming major NSR applicability determinations to NSPS applicability determinations. We also note that Option 2 (both achievable and achieved alternatives) eliminates the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, because any increase in the emissions under the maximum hourly achievable emissions test would logically be attributed to the change. In addition, Option 2 reduces recordkeeping and reporting burdens on sources because compliance will no longer rely on synthesizing emissions data into rolling average emissions. Option 2 would also reduce the reviewing authorities' compliance and enforcement burden.

Consistent with our policy goal of encouraging efficient use of existing energy capacity, we are continuing to propose an output-based format for the hourly emissions increase tests. An output-based standard establishes emission limits in a format that incorporates the effects of unit efficiency by relating emissions to the amount of useful energy generated, not the amount of fuel burned. By relating emission limitations to the productive output of the process, output-based emission limits encourage energy efficiency because any increase in overall energy efficiency results in a lower emission rate. Allowing energy efficiency as a pollution control measure provides regulated sources with an additional compliance option that can lead to reduced compliance costs as well as lower emissions. The use of more efficient technologies reduces fossil fuel use and leads to multi-media reductions in environmental impacts both on-site and off-site.

Option 2 does not include steps for determining whether significant net emissions increases have occurred. We recognize that the D.C. Circuit, in the seminal case, *Alabama Power* v. *EPA*, 636 F.2d 323 (D.C. Cir. 1980), which was handed down before Chevron, held that failure to interpret ''increases'' to allow netting would be ''unreasonable and contrary to the expressed purposes of the PSD provisions. * * * '' *Id.* at 401. As we noted at 70 FR 61093, it is important to place this ruling in the context of the rules before the Court at that time. Our 1978 regulations required a source-wide accumulation of emissions increases without providing for an ability to offset these accumulated increases with any source-wide decreases. In finding that we must apply a bubble approach, the Court held that we could not require sources to accumulate increases without also accumulating decreases. It is unclear whether the Court would have reached the same conclusion if the emissions test before the Court only considered the increases from the project under review and not source-wide increases from multiple projects. We request comment on our observations related to the *Alabama Power* Court's decision related to netting and whether a major NSR program without netting can be supported under the Act.

With respect to the significance levels, which, like netting, are not included under Option 2, we recognize that *Alabama Power* also upheld significance levels as a ''permissible * * * exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis*.'' *Id.* At 360. It is clear, however, that the Court considered the establishment of significance levels as discretionary. We believe that significance levels are not important to include in the rules proposed in Option 2 because under those rules, relatively minor changes for which the significance levels might come into play would not increase the maximum hourly rate. By comparison, the changes that do increase the maximum hourly rate are likely to be capacity increases that should not, by their nature, be considered *de minimis*.

[32] Commenters stated that the maximum achieved test is difficult to comply with due to fluctuations in equipment and control device performance that are beyond the control of the EGU owner/operator.

We request comment on all aspects of our legal and policy basis.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' The action was identified as a ''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the Information Collection Request (ICR) document assigned EPA ICR number 1230.19. A copy of the analysis is available in the docket for this action and the analysis is briefly summarized in the Paperwork Reduction Act section.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA has been assigned EPA ICR number 1230.19.

Certain records and reports are necessary for the State or local agency (or the EPA Administrator in non-delegated areas), for example, to: (1) Confirm the compliance status of stationary sources, identify any stationary sources not subject to the standards, and identify stationary sources subject to the rules; and (2) ensure that the stationary source control requirements are being achieved. The information would be used by the EPA or State enforcement personnel to (1) identify stationary sources subject to the rules, (2) ensure that appropriate control technology is being properly applied, and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis. Based on the reported information, the State, local or tribal agency can decide which plants, records, or processes should be inspected.

The proposed rule would reduce burden for owners and operators of major stationary sources. We expect the proposed rule would simplify applicability determinations, eliminate the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, and reduce recordkeeping and reporting burdens. Over the 3-year period covered by the ICR, we estimate an average annual reduction in burden for all industry entities that would be affected by the proposed rule. For the same reasons, we also expect the proposed rule to reduce burden for State and local authorities reviewing permits when fully implemented. However, there would be a one-time, additional burden for State and local agencies to revise their SIPs to incorporate the proposed changes.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of responding to the information collection; adjust existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing 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 parts 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2005–1063. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, Northwest, Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 8, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by June 7, 2007. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (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 this notice on small entities, I certify 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 certify 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.

We believe that these proposed rule changes will relieve the regulatory burden associated with the major NSR program for all EGUs, including any EGUs that are small businesses. This is because the proposed rule would simplify applicability determinations, eliminate the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, and by reducing recordkeeping and reporting burdens. As a result, the program changes

provided in the proposed rule are not expected to result in any increases in expenditure by any small entity.

We have therefore concluded that this proposed rule would relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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.

We have determined that this rule would not contain a Federal mandate that would result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although initially these changes are expected to result in a small increase in the burden imposed upon reviewing authorities in order for them to be included in the State's SIP, these revisions would ultimately simplify applicability determinations, eliminate the burden of reviewing projected future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, and reduce the burden associated with making compliance determinations. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reasons stated above, we have determined that this notice contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this action is not subject to the requirements of section 203 of the UMRA.

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 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. We estimate a one-time burden of approximately 2,240 hours and $83,000 for State agencies to revise their SIPs to include the proposed regulations. However, these revisions would ultimately simplify applicability determinations, eliminate the burden of reviewing projected future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, and reduce the burden associated with making compliance determinations. This will in turn reduce the overall burden of the program. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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 proposed rule does not have tribal implications, as specified in Executive Order 13175. There are no Tribal authorities currently issuing major NSR permits. To the extent that this proposed rule may apply in the future to any EGU that may locate on tribal lands, tribal officials are afforded the opportunity to comment on tribal implications in this notice. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this proposed rule, EPA specifically solicits comment on this proposed rule from tribal officials. We will also consult with tribal officials, including officials of the Navaho Nation lands on which Navajo Power Plant and Four Corners Generating Plant are located, before promulgating the final regulations. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local government, EPA specifically solicits comment on this proposed rule from State and local governments.

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 or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe

the environmental health or safety risks addressed by this action present a disproportionate risk to children. We believe that, based on our analysis of electric utilities, this rule as a whole will result in equal environmental protection to that currently provided by the existing regulations, and do so in a more streamlined and effective manner. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to electric utilities.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' [66 FR 28355 (May 22, 2001)] because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In fact, this rule improves owner/operator flexibility concerning the supply, distribution, and use of energy. Specifically, the proposed rule would increase owner/operators' ability to utilize existing capacity at EGUs.

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, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, 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 proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule amendment, in conjunction with other existing programs, would not relax the control measures on sources regulated by the rule and therefore would not cause emissions increases from these sources.

VIII. Statutory Authority

The statutory authority for this action is provided by sections 307(d) (7) (B), 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Nitrogen dioxide, Sulfur dioxide.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Nitrogen dioxide, Sulfur dioxide.

Dated: April 25, 2007.

Stephen L. Johnson,

Administrator.

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

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401—7671q.

Subpart I—[Amended]

2. Add § 51.167 to read as follows:

§ 51.167 Preliminary major NSR applicability test for electric generating units (EGUs).

(a) *What is the purpose of this section?* State Implementation Plans and Tribal Implementation Plans must include the requirements in paragraphs (b) through (h) of this section for determining (prior to or after construction) whether a change to an EGU is a modification for purposes of major NSR applicability. Deviations from these provisions will be approved only if the State or Tribe demonstrates that the submitted provisions are at least as stringent in all respects as the corresponding provisions in paragraphs (b) through (h) of this section.

(b) *Am I subject to this section?* You must meet the requirements of this section if you own or operate an EGU that is located at a major stationary source, and you plan to make a change to the EGU.

(c) *What happens if a change to my EGU is determined to be a modification according to the procedures of this section?* If the change to your EGU is a modification according to the procedures of this section, you must determine whether the change is a major modification according to the procedures of the major NSR program that applies in the area in which your EGU is located. That is, you must evaluate your modification according to the requirements set out in the applicable regulations approved pursuant to § 51.165 and/or § 51.166, depending on the regulated NSR pollutants emitted and the attainment status of the area in which your EGU is located for those pollutants. Section 51.165 sets out the requirements for State nonattainment major NSR programs, while § 51.166 sets out the requirements for State PSD programs.

(d) *What is the process for determining if a change to an EGU is a modification?* The two-step process set out in paragraphs (d)(1) and (2) of this section is used to determine (before beginning actual construction) whether a change to an EGU located at a major stationary source is a modification. Regardless of any preconstruction projections, a modification has occurred if a change satisfies both steps in the process.

(1) *Step 1.* Is the change a physical change in, or change in the method of operation of, the EGU? (See paragraph (e) of this section for a list of actions that are not physical or operational

changes.) If so, go on to Step 2 (paragraph (d)(2) of this section).

(2) *Step 2.* Will the physical or operational change to the EGU increase the amount of any regulated NSR pollutant emitted into the atmosphere by the source (as determined according to paragraph (f) of this section) or result in the emissions of any regulated NSR pollutant(s) into the atmosphere that the source did not previously emit? If so, the change is a modification.

(e) *What types of actions are not physical changes or changes in the method of operation? (Step 1)* For purposes of this section, a physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair, and replacement;

(2) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) Use of an alternative fuel or raw material by a stationary source which the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to § 51.165 or § 51.166, or which:

(i) For purposes of evaluating attainment pollutants, the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51 subpart I or § 51.166; or

(ii) For purposes of evaluating nonattainment pollutants, the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51 subpart I or § 51.166;

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975 (for purposes of evaluating attainment pollutants) or after December 21, 1976 (for purposes of evaluating nonattainment pollutants) pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51 subpart I or § 51.166;

(7) Any change in ownership at a stationary source;

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) The State Implementation Plan for the State in which the project is located; and

(ii) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(9) For purposes of evaluating attainment pollutants, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(10) For purposes of evaluating attainment pollutants, the reactivation of a very clean coal-fired EGU.

(f) *How do I determine if there is an emissions increase? (Step 2)* You must determine if the physical or operational change to your EGU increases the amount of any regulated NSR pollutant emitted to the atmosphere using the method in paragraph (f)(1) of this section, subject to the limitations in paragraph (f)(2) of this section. If the physical or operational change to your EGU increases the amount of any regulated NSR pollutant emitted into the atmosphere or results in the emission of any regulated NSR pollutant(s) into the atmosphere that your EGU did not previously emit, the change is a modification as defined in paragraph (h)(2) of this section.

Alternative 1 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant for which you have hourly average CEMS or PEMS emissions data with corresponding fuel heat input data, compare the pre-change maximum actual hourly emissions rate in pounds per hour (lb/hr) to a projection of the post-change maximum actual hourly emissions rate in lb/hr, subject to the provisions in paragraphs (f)(1)(i) through (iii) of this section.

(i) *Pre-change emissions.* Determine the pre-change maximum actual hourly emissions rate as follows:

(A) Select a period of 365 consecutive days within the 5-year period immediately preceding when you begin actual construction of the physical or operational change. Compile a data set (for example, in a spreadsheet) with the hourly average CEMS or PEMS (as applicable) measured emissions rates and corresponding heat input data for all of the hours of operation for that 365-day period for the pollutant of interest.

(B) Delete any unacceptable hourly data from this 365-day period in accordance with the data limitations in paragraph (f)(2) of this section.

(C) Extract the hourly data for the 10 percent of the remaining data set corresponding to the highest heat input rates for the selected period. This step may be facilitated by sorting the data set for the remaining operating hours from the lowest to the highest heat input rates.

(D) Calculate the average emissions rate from the extracted (i.e., highest 10 percent heat input rates) data set, using Equation 1:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i \qquad \text{Equation 1}$$

Where:
$\bar{x}$ = average emissions rate, lb/hr;
n = number of emissions rate values; and
x_i = i^{th} emissions rate value, lb/hr

(E) Calculate the standard deviation of the data set, s, using Equation 2:

$$s = \sqrt{\frac{\sum_{i=1}^{n} X_i^2 - \frac{\left(\sum_{i=1}^{n} X_i\right)^2}{n}}{n-1}} \qquad \text{Equation 2}$$

(F) Calculate the Upper Tolerance Limit, UTL, of the data set using Equation 3:

$$UTL = \bar{x} + s * \left[\frac{Z_{1-p} + \sqrt{\left(Z_{1-p}^{2}\right) - \left[1 - \frac{Z_{1-q}^{2}}{2*(n-1)}\right] * \left[Z_{1-p}^{2} - \frac{Z_{1-q}^{2}}{n}\right]}}{1 - \frac{Z_{1-q}^{2}}{2*(n-1)}} \right] \quad \text{Equation 3}$$

Where:
Z_{1-p} = 3.090, Z score for the 99.9 percentage of interval; and
Z_{1-q} = 2.326, Z score for the 99 percent confidence level.

(G) Use the UTL calculated in paragraph (f)(1)(i)(F) of this section as the pre-change maximum actual hourly emissions rate.

(ii) *Post-change emissions—preconstruction projections.* For each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve in any 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual hourly emissions rate exceeds the pre-change maximum actual hourly emissions rate.

(iii) *Post-change emissions-actually achieved.* Regardless of any preconstruction projections, an emissions increase has occurred if the hourly emissions rate actually achieved in the 5 years after the change exceeds the pre-change maximum actual hourly emissions rate.

Alternative 2 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant for which you have hourly average CEMS or PEMS emissions data with corresponding fuel heat input data, compare the pre-change maximum actual emissions rate in pounds per megawatt-hour (lb/MWh) to a projection of the post-change maximum actual emissions rate in lb/MWh, subject to the provisions in paragraphs (f)(1)(i) through (iii) of this section. For EGUs that are cogeneration units, emissions rates are determined based on gross energy output. For other EGUs, emissions rates are determined based on gross electrical output.

(i) *Pre-change emissions.* Determine the pre-change maximum actual emissions rate as follows:

(A) Select a period of 365 consecutive days within the 5-year period immediately preceding when you begin actual construction of the physical or operational change. Compile a data set (for example, in a spreadsheet) with the hourly average CEMS or PEMS (as applicable) measured emissions rates in lb/MWh and corresponding heat input data for all of the hours of operation for that 365-day period for the pollutant of interest.

(B) Delete any unacceptable hourly data from this 365-day period in accordance with the data limitations in paragraph (f)(2) of this section.

(C) Extract the hourly data for the 10 percent of the remaining data set corresponding to the highest heat input rates for the selected period. This step may be facilitated by sorting the data set for the remaining operating hours from the lowest to the highest heat input rates.

(D) Calculate the average emissions rate from the extracted (i.e., highest 10 percent heat input rates) data set, using Equation 1:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i \quad \text{Equation 1}$$

Where:
$\bar{x}$ = average emissions rate, lb/MWh;
n = number of emissions rate values; and
x_i = i^{th} emissions rate value, lb/MWh

(E) Calculate the standard deviation of the data set, s, using Equation 2:

$$s = \sqrt{\frac{\sum_{i=1}^{n} X_i^2 - \frac{\left(\sum_{i=1}^{n} X_i\right)^2}{n}}{n-1}} \quad \text{Equation 2}$$

(F) Calculate the Upper Tolerance Limit, UTL, of the data set using Equation 3:

$$UTL = \bar{x} + s * \left[\frac{Z_{1-p} + \sqrt{\left(Z_{1-p}^{2}\right) - \left[1 - \frac{Z_{1-q}^{2}}{2*(n-1)}\right] * \left[Z_{1-p}^{2} - \frac{Z_{1-q}^{2}}{n}\right]}}{1 - \frac{Z_{1-q}^{2}}{2*(n-1)}} \right] \quad \text{Equation 3}$$

Where:
Z_{1-p} = 3.090, Z score for the 99.9 percentage of interval; and
Z_{1-q} = 2.326, Z score for the 99 percent confidence level.

(G) Use the UTL calculated in paragraph (f)(1)(i)(F) of this section as the pre-change maximum actual hourly emissions rate.

(ii) *Post-change emissions—preconstruction projections.* For each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve over any period of 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual emissions rate exceeds the pre-change maximum actual emissions rate.

(iii) *Post-change emissions—actually achieved.* Regardless of any preconstruction projections, an emissions increase has occurred if the emissions rate actually achieved over any period of 1 hour in the 5 years after the change exceeds the pre-change maximum actual emissions rate.

Alternative 3 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant, compare the pre-change maximum actual hourly emissions rate in pounds per hour (lb/hr) to a projection of the post-change maximum actual hourly emissions rate in lb/hr, subject to the provisions in paragraphs (f)(1)(i) through (iv) of this section.

(i) *Pre-change emissions—general procedures.* The pre-change maximum actual hourly emissions rate for the

pollutant is the highest emissions rate (lb/hr) actually achieved by the EGU for 1 hour at any time during the 5-year period immediately preceding when you begin actual construction of the physical or operational change.

(ii) *Pre-change emissions—data sources.* You must determine the highest pre-change hourly emissions rate for each regulated NSR pollutant using the best data available to you. Use the highest available source of data in the following hierarchy, unless your reviewing authority has determined that a data source lower in the hierarchy will provide better data for your EGU:

(A) Continuous emissions monitoring system (CEMS).

(B) Approved predictive emissions monitoring system (PEMS).

(C) Emission tests/emission factor specific to the EGU to be changed.

(D) Material balance calculations.

(E) Published emission factor.

(iii) *Post-change emissions—preconstruction projections.* For each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve in any 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual hourly emissions rate exceeds the pre-change maximum actual hourly emissions rate.

(iv) *Post-change emissions—actually achieved.* Regardless of any preconstruction projections, an emissions increase has occurred if the hourly emissions rate actually achieved in the 5 years after the change exceeds the pre-change maximum actual hourly emissions rate.

Alternative 4 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant, compare the pre-change maximum actual emissions rate in pounds per megawatt-hour (lb/MWh) to a projection of the post-change maximum actual emissions rate in lb/MWh, subject to the provisions in paragraphs (f)(1)(i) through (iv) of this section. For EGUs that are cogeneration units, emissions rates are determined based on gross energy output. For other EGUs, emissions rates are determined based on gross electrical output.

(i) *Pre-change emissions—general procedures.* The pre-change maximum actual emissions rate for the pollutant is the highest emissions rate (lb/MWh) actually achieved by the EGU over any period of 1 hour during the 5-year period immediately preceding when you begin actual construction of the physical or operational change.

(ii) *Pre-change emissions—data sources.* You must determine the highest pre-change emissions rate for each regulated NSR pollutant using the best data available to you. Use the highest available source of data in the following hierarchy, unless your reviewing authority has determined that a data source lower in the hierarchy will provide better data for your EGU:

(A) Continuous emissions monitoring system (CEMS).

(B) Approved predictive emissions monitoring system (PEMS).

(C) Emission tests/emission factor specific to the EGU to be changed.

(D) Material balance calculations.

(E) Published emission factor.

(iii) *Post-change emissions—preconstruction projections.* For each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve over any period of 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual emissions rate exceeds the pre-change maximum actual emissions rate.

(iv) *Post-change emissions—actually achieved.* Regardless of any preconstruction projections, an emissions increase has occurred if the emissions rate actually achieved over any period of 1 hour in the 5 years after the change exceeds the pre-change maximum actual emissions rate.

Alternative 5 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant, compare the maximum achievable hourly emissions rate before the physical or operational change to the maximum achievable hourly emissions rate after the change. Determine these maximum achievable hourly emissions rates according to § 60.14(b) of this chapter. No physical change, or change in the method of operation, at an existing EGU shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any regulated NSR pollutant above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

Alternative 6 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant, compare the maximum achievable emissions rate in pounds per megawatt-hour (lb/MWh) before the physical or operational change to the maximum achievable emissions rate in lb/MWh after the change. Determine these maximum achievable emissions rates according to § 60.14(b) of this chapter, using emissions rates in lb/MWh achievable over 1 hour of continuous operation in place of mass emissions rates. For EGUs that are cogeneration units, determine emissions rates based on gross energy output. For other EGUs, determine emissions rates based on gross electrical output. No physical change, or change in the method of operation, at an existing EGU shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum emissions rate of any regulated NSR pollutant above the maximum emissions rate achievable at that unit during the 5 years prior to the change.

(2) *Data limitations for maximum emissions rates.* For purposes of determining pre-change and post-change maximum emissions rates under paragraph (f)(1) of this section, the following limitations apply to the types of data that you may use:

(i) *Data limitations for Alternatives 1–4.*

(A) You must not use emissions rate data associated with startups, shutdowns, or malfunctions of your EGU, as defined by applicable regulation(s) or permit term(s), or malfunctions of an associated air pollution control device. A malfunction means any sudden, infrequent, and not reasonably preventable failure of the EGU or the air pollution control equipment to operate in a normal or usual manner.

(B) You must not use continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) data recorded during monitoring system out-of-control periods. Out-of-control periods include those during which the monitoring system fails to meet quality assurance criteria (for example, periods of system breakdown, repair, calibration checks, or zero and span adjustments) established by regulation, by permit, or in an approved quality assurance plan.

(C) You must not use emissions rate data from periods of noncompliance when your EGU was operating above an emission limitation that was legally enforceable at the time the data were collected.

(D) You must not use data from any period for which the information is inadequate for determining emissions rates, including information related to the limitations in paragraphs (f)(2)(i)(A) through (C) of this section.

(ii) *Data limitations for Alternatives 5 and 6.*

(A) You must not use emissions rate data associated with startups,

shutdowns, or malfunctions of your EGU, as defined by applicable regulation(s) or permit term(s), or malfunctions of an associated air pollution control device. A malfunction means any sudden, infrequent, and not reasonably preventable failure of the EGU or the air pollution control equipment to operate in a normal or usual manner.

(B) You must not use continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) data recorded during monitoring system out-of-control periods. Out-of-control periods include those during which the monitoring system fails to meet quality assurance criteria (for example, periods of system breakdown, repair, calibration checks, or zero and span adjustments) established by regulation, by permit, or in an approved quality assurance plan.

(C) You must not use data from any period for which the information is inadequate for determining emissions rates, including information related to the limitations in paragraphs (f)(2)(ii)(A) and (B) of this section.

(g) *What are my requirements for recordkeeping?* You must maintain a file of all information related to determinations that you make under this section of whether a change to an EGU is a modification, subject to the following provisions:

(1) The file must include, but is not limited to, the following information recorded in permanent form suitable for inspection:

(i) Continuous monitoring system, monitoring device, and performance testing measurements;

(ii) All continuous monitoring system performance evaluations;

(iii) All continuous monitoring system or monitoring device calibration checks;

(iv) All adjustments and maintenance performed on these systems or devices; and

(v) All other information relevant to any determination made under this section of whether a change to an EGU is a modification.

(2) You must retain the file until the later of:

(i) The date 5 years following the date the EGU resumes regular operation after the physical or operational change; and

(ii) The date 5 years following the date of such measurements, maintenance, reports, and records.

(h) *What definitions apply under this section?* The definitions in paragraphs (h)(1) and (2) of this section apply. Except as specifically provided in this paragraph (h), terms used in this section have the meaning accorded them under § 51.165(a)(1) or § 51.166(b), as appropriate to the situation (for example, the attainment status of the area where your source is located for a particular regulated NSR pollutant of interest). Terms not defined here or in § 51.165(a)(1) or § 51.166(b) (as appropriate) have the meaning accorded them under the applicable requirements of the Clean Air Act, 42 U.S.C. 7401, *et seq.*

(1) *Terms related to EGUs that are defined in § 51.124(q).* The following terms are as defined in § 51.124(q):

Boiler.
Bottoming-cycle cogeneration unit.
Cogeneration unit.
Combustion turbine.
Electric generating unit or *EGU.*
Fossil fuel.
Fossil-fuel-fired.
Generator.
Maximum design heat input.
Nameplate capacity.
Potential electrical output capacity.
Sequential use of energy.
Topping-cycle cogeneration unit.
Total energy input.
Total energy output.
Useful power.
Useful thermal energy.
Utility power distribution system.

(2) *Other terms defined for the purposes of this section.*

Attainment pollutant means a regulated NSR pollutant for which your EGU may be subject to the PSD program that is applicable in the area where your EGU is located. In general, attainment pollutants are the regulated NSR pollutants listed in the PSD program for which there is no NAAQS or for which the area in which your EGU is located is designated as attainment or unclassifiable according to part 81 of this chapter. However, pollutant or precursor transport considerations may cause such regulated NSR pollutants to be treated as nonattainment pollutants as defined in this paragraph (h)(2) (for example, if your EGU is located in an ozone transport region).

Gross electrical output means the electricity made available for use by the generator associated with the EGU.

Gross energy output means, with regard to a cogeneration unit, the sum of the gross power output and the useful thermal energy output produced by the cogeneration unit.

Gross power output means, with regard to a cogeneration unit, electricity or mechanical energy made available for use by the cogeneration unit.

Modification, for an EGU, means any physical change in, or change in the method of operation of, an EGU which increases the amount of any regulated NSR pollutant emitted into the atmosphere by that source or which results in the emission of any regulated NSR pollutant(s) into the atmosphere that the source did not previously emit. An increase in the amount of regulated NSR pollutants must be determined according to the provisions in paragraph (f) of this section. For purposes of this section, a physical change or change in the method of operation shall not include the types of actions listed in paragraph (e) of this section.

Nonattainment pollutant means a regulated NSR pollutant for which your EGU may be subject to the nonattainment major NSR program that is applicable in the area where your EGU is located. In general, nonattainment pollutants are the regulated NSR pollutants listed in the nonattainment major NSR program for which the area in which your EGU is located is designated as nonattainment according to part 81 of this chapter. However, pollutant or precursor transport considerations may cause such regulated NSR pollutants to be treated as attainment pollutants as defined in this paragraph (h)(2).

Useful thermal energy output means, with regard to a cogeneration unit, the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application, that is, total thermal energy made available for processes and applications other than electrical or mechanical generation. Thermal output for this section means the energy in recovered thermal output measured against the energy in the thermal output at 15 degrees Celsius and 101.325 kilopascals of pressure.

[FR Doc. E7–8263 Filed 5–7–07; 8:45 am]

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Tuesday,
May 8, 2007

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2008; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1551–P]

RIN 0938–AO63

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2008 (for discharges occurring on or after October 1, 2007 and on or before September 30, 2008) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before the August 1 that precedes the start of each fiscal year, the classification and weighting factors for the IRF prospective payment system's (PPS) case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

We are proposing to revise existing policies regarding the PPS within the authority granted under section 1886(j) of the Act.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 2, 2007.

ADDRESSES: In commenting, please refer to file code CMS–1551–P. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. Electronically. You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking*. Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–1551–P, P.O. Box 8012, Baltimore, MD 21244–8012. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–1551–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–8012.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Pete Diaz, (410) 786–1235, for information regarding the 75 percent rule. Susanne Seagrave, (410) 786–0044, for information regarding the payment policies. Zinnia Ng, (410) 786–4587, for information regarding the wage index and prospective payment rate calculation.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1551–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking*. Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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Addendum

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below.

ASCA—Administrative Simplification Compliance Act of 2002, Pub. L. 107–105
BBA—Balanced Budget Act of 1997, Pub. L. 105–33
BBRA—Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA—Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
CBSA—Core-Based Statistical Area
CCR—Cost-to-Charge Ratio
CFR—Code of Federal Regulations
CMG—Case-Mix Group
DRA—Deficit Reduction Act of 2005, Pub. L. 109–171
DSH—Disproportionate Share Hospital
ECI—Employment Cost Indexes
FI—Fiscal Intermediary
FR—Federal Register
FY—Federal Fiscal Year
GDP—Gross Domestic Product
HHH—Hubert H. Humphrey Building
HIPAA—Health Insurance Portability and Accountability Act, Pub. L. 104–191
IFMC—Iowa Foundation for Medical Care
IPPS—Inpatient Prospective Payment System
IRF—Inpatient Rehabilitation Facility
IRF–PAI—Inpatient Rehabilitation Facility-Patient Assessment Instrument
IRF PPS—Inpatient Rehabilitation Facility Prospective Payment System
IRVEN—Inpatient Rehabilitation Validation and Entry
LIP—Low-Income Percentage
MEDPAR—Medicare Provider Analysis and Review
MMA—Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173)
MSA—Metropolitan Statistical Area
NAICS—North American Industrial Classification System
OMB—Office of Management and Budget
PAI—Patient Assessment Instrument
PPS—Prospective Payment System
RAND—RAND Corporation
RFA—Regulatory Flexibility Act, Pub. L. 96–354
RIA—Regulation Impact Analysis
RIC—Rehabilitation Impairment Category
RPL—Rehabilitation, Psychiatric, and Long-Term Care Hospital Market Basket
SCHIP—State Children's Health Insurance Program
SIC—Standard Industrial Code
TEFRA—Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248

I. Background

[If you choose to comment on issues in this section, please include the caption ''Background'' at the beginning of your comments.]

A. Historical Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS) for Fiscal Years (FYs) 2002 through 2007

Section 4421 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33), as amended by section 125 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106–113), and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106–554), provides for the implementation of a per discharge prospective payment system (PPS), through section 1886(j) of the Social Security Act (the Act), for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (hereinafter referred to as IRFs).

Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the August 7, 2001 final rule (66 FR 41316) as revised in the FY 2006 IRF PPS final rule (70 FR 47880), we are providing below a general description of the IRF PPS for fiscal years (FYs) 2002 through 2005.

Under the IRF PPS from FY 2002 through FY 2005, as described in the August 7, 2001 final rule, the Federal prospective payment rates were computed across 100 distinct case-mix groups (CMGs). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget neutral conversion factor). For a detailed discussion of the budget neutral conversion factor, please refer to our August 1, 2003 final rule (68 FR 45674, 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted Federal prospective payment rates. Under the IRF PPS from FYs 2002 through 2005, we then applied adjustments for geographic variations in wages (wage index), the percentage of low-income patients, and location in a rural area (if applicable) to the IRF's unadjusted Federal prospective payment rates. In addition, we made adjustments to account for short-stay transfer cases, interrupted stays, and high cost outliers.

For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRF would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS. The Web site URL is *http://www.cms.hhs.gov/InpatientRehabFacPPS/* and may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

Section 1886(j) of the Act confers broad statutory authority to propose refinements to the IRF PPS. We finalized the refinements described in this section in the FY 2006 IRF PPS final rule (70 FR 47880). The provisions of the FY 2006 IRF PPS final rule became effective for discharges beginning on or after October 1, 2005. We published correcting amendments to the FY 2006 IRF PPS final rule in the **Federal Register** on September 30, 2005 (70 FR 57166). Any reference to the FY 2006 IRF PPS final rule in this proposed rule also includes the provisions effective in the correcting amendments.

In the FY 2006 final rule (70 FR 47880 and 70 FR 57166), we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements were based on analyses by the RAND Corporation (RAND), a non-partisan economic and social policy research group, using calendar year 2002 and FY 2003 data. These were the first significant refinements to the IRF PPS since its implementation. In conducting the analysis, RAND used claims and clinical data for services furnished after the IRF PPS implementation. These newer data sets were more complete, and reflected improved coding of comorbidities and patient severity by IRFs. The researchers were able to use new data sources for imputing missing values and more advanced statistical approaches to complete their analyses. The RAND reports supporting the refinements made to the IRF PPS are available on the CMS Web site at: *http://www.cms.hhs.gov/InpatientRehabFacPPS/09_Research.asp*.

The final key policy changes, effective for discharges occurring on or after October 1, 2005, are discussed in detail in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166). The following is a brief summary of the key policy changes:

- Adopted the Office of Management and Budget's (OMB's) Core-Based Statistical Area (CBSA) market area definitions in a budget neutral manner.
- Implemented a budget-neutral three-year hold harmless policy for IRFs that had been classified as rural in FY 2005, but became urban in FY 2006.
- Implemented a payment adjustment to account for changes in coding that did not reflect real changes in case mix. We reduced the standard payment amount by 1.9 percent to account for such changes in coding following implementation of the IRF PPS.
- Modified the CMGs, tier comorbidities, and relative weights in a budget-neutral manner. The five special CMGs remained the same as they had been before FY 2006 and continued to account for very short stays and for patients who expire in the IRF.
- Implemented a teaching status adjustment in a budget neutral manner for IRFs, similar to the one adopted for inpatient psychiatric facilities.
- Revised and rebased the market basket and labor-related share to reflect the operating and capital cost structures for rehabilitation, psychiatric, and long-term care (RPL) hospitals to update IRF payment rates.
- Updated the rural adjustment from 19.14 percent to 21.3 percent in a budget neutral manner.
- Updated the low-income percentage (LIP) adjustment from an exponent of 0.484 to an exponent of 0.6229 in a budget neutral manner.
- Updated the outlier threshold amount from $11,211 to $5,129.

As noted above, a detailed discussion of the final key policy changes for FY 2006 appears in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166).

In the FY 2007 final rule (71 FR 48354) we made the following revisions and updates:

- Updated the relative weight and average length of stay tables based on re-analysis of the data by CMS and our contractor, the RAND Corporation.
- Reduced the standard payment amount by 2.6 percent to account more fully for coding changes that do not reflect real changes in case mix.
- Updated the IRF PPS payment rates by the FY 2007 estimates of the market basket and the labor-related share.
- Updated the IRF PPS payment rates by the FY 2007 wage indexes.
- Applied the second year of the hold harmless policy in a budget neutral manner.
- Updated the outlier threshold from $5,129 to $5,534.
- Updated the urban and rural national cost-to-charge ratio ceilings for the purposes of determining outlier payments under the IRF PPS and clarified the methodology described in the regulations text.
- Revised the regulation text in § 412.23(b)(2)(i) and § 412.23(b)(2)(ii) to reflect the statutory changes in section 5005 of the Deficit Reduction Act of 2005 (DRA, Pub. L. 109–171). The regulation text change prolongs the overall duration of the phased transition to the full 75 percent threshold established in § 412.23(b)(2)(i) and § 412.23(b)(2)(ii), by extending the transition's 60 percent phase for an additional 12 months. In addition to the above DRA requirements pertaining to the applicable compliance percentage requirements under § 412.23(b)(2), we also permitted a comorbidity that meets the criteria as specified in (b)(2)(i) to continue to be used before the 75 percent compliance threshold must be met.

B. Requirements for Updating the IRF PPS Rates

On August 7, 2001, we published a final rule titled ''Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities'' in the **Federal Register** (66 FR 41316) that established a PPS for IRFs as authorized under section 1886(j) of the Act and codified at subpart P of part 412 of the Medicare regulations. In the August 7, 2001 final rule, we set forth the per discharge Federal prospective payment rates for FY 2002, which provided payment for inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IRF PPS. The provisions of the August 7, 2001 final rule were effective for cost reporting periods beginning on or after January 1, 2002. On July 1, 2002, we published a correcting amendment to the August 7, 2001 final rule in the **Federal Register** (67 FR 44073). Any references to the August 7, 2001 final rule in this proposed rule include the provisions effective in the correcting amendment.

Section 1886(j)(5) of the Act and § 412.628 of the regulations require the Secretary to publish in the **Federal Register**, on or before the August 1 that precedes the start of each new FY, the classifications and weighting factors for the IRF CMGs and a description of the methodology and data used in computing the prospective payment rates for the upcoming FY. On August 1, 2002, we published a notice in the **Federal Register** (67 FR at 49928) to update the IRF Federal prospective payment rates from FY 2002 to FY 2003 using the methodology as described in § 412.624. As stated in the August 1, 2002 notice, we used the same classifications and weighting factors for the IRF CMGs that were set forth in the August 7, 2001 final rule to update the IRF Federal prospective payment rates from FY 2002 to FY 2003. We continued to update the prospective payment rates in accordance with the methodology set forth in the August 7, 2001 final rule for each succeeding FY up to and including FY 2005. For FY 2006, however, we published a final rule that revised several IRF PPS policies (70 FR 47880). The provisions of the FY 2006 IRF PPS final rule became effective for discharges occurring on or after October 1, 2005. We published correcting amendments to the FY 2006 IRF PPS final rule in the **Federal Register** (70 FR 57166). Any reference to the FY 2006 IRF PPS final rule in this proposed rule includes the provisions effective in the correcting amendments.

In the final rule for FY 2007, we updated the IRF Federal prospective payment rates. In addition, we updated the cost-to-charge ratio ceilings and the outlier threshold. We implemented a 2.6

percent reduction to the FY 2007 standard payment amount to account more fully for changes in coding practices that do not reflect real changes in case mix. We revised the tier comorbidities and the relative weights to ensure that IRF PPS payments reflect, as closely as possible, the costs of caring for patients in IRFs. The final FY 2007 Federal prospective payment rates were effective for discharges occurring on or after October 1, 2006 and on or before September 30, 2007.

C. Operational Overview of the Current IRF PPS

As described in the August 7, 2001 final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument, the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF-PAI). All required data must be electronically encoded into the IRF-PAI software product. Generally, the software product includes patient grouping programming called the GROUPER software. The GROUPER software uses specific Patient Assessment Instrument (PAI) data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The GROUPER software produces a five-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last four digits represent the distinct CMG number. (Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available on the CMS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/06_Software.asp*).

Once a patient is discharged, the IRF completes the Medicare claim (UB–92 or its equivalent) using the five-digit CMG number and sends it to the appropriate Medicare fiscal intermediary (FI). Claims submitted to Medicare must comply with both the Administrative Simplification Compliance Act (ASCA, Pub. L. 107–105), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104–191). Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22) which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services ''for which a claim is submitted other than in an electronic form specified by the Secretary.'' Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in two types of cases and may also waive such denial ''in such unusual cases as the Secretary finds appropriate.'' See also the final rule on Electronic Submission of Medicare Claims (70 FR 71008, November 25, 2005). Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified as 45 CFR parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the program claim memoranda issued and published by CMS at: *http://www.cms.hhs.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600. Instructions for the limited number of claims submitted to Medicare on paper are published by CMS at: *http://www.cms.hhs.gov/manuals/downloads/clm104c25.pdf*.

The Medicare FI processes the claim through its software system. This software system includes pricing programming called the PRICER software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the new teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

D. Brief Summary of Proposed Revisions to the IRF PPS for FY 2008

In this proposed rule, we are proposing to make the following revisions, updates, and clarifications:

- Update the FY 2008 IRF PPS payment rates by the proposed market basket, as discussed in section IV.A.
- Update the FY 2008 IRF PPS payment rates by the proposed wage index and the labor related share in a budget neutral manner, as discussed in section IV.A and B.
- Update the pre-reclassified and pre-floor wage indexes based on the applicable Office of Management and Budget (OMB) bulletins that add or delete Core-Based Statistical Areas (CBSAs) numbers and title changes, as discussed in section IV.B.
- Implement the final year of the 3-year hold harmless policy adopted in the FY 2006 IRF PPS final rule (70 FR 47880, 47923 through 47926) in a budget neutral manner, as discussed in section IV.B.
- Update the outlier threshold amount for FY 2008 to $7,522, as discussed in section V.A.
- Update the cost-to-charge ratio ceiling and the national average urban and rural cost-to-charge ratios for purposes of determining outlier payments under the IRF PPS, as discussed in section V.B.
- Clarify the regulations text for the special payment provisions for patients that are transferred, as discussed in section VI.

II. 75 Percent Rule Policy

[If you choose to comment on issues in this section, please include the caption ''75 Percent Rule Policy'' at the beginning of your comments.]

In order to be excluded from the acute care inpatient hospital PPS specified in § 412.1(a)(1) and instead be paid under the IRF PPS, a hospital or rehabilitation unit of an acute care hospital must meet the requirements for classification as an IRF stipulated in subpart B of part 412. As discussed in previous **Federal Register** publications (68 FR 26786 (May 16, 2003), 68 FR 53266 (September 9, 2003), 69 FR 25752 (May 7, 2004), 70 FR 36640 (June 24, 2005), and 71 FR 48354 (August 18, 2006)), § 412.23(b)(2) specifies one criterion which Medicare uses for classifying a hospital or unit of a hospital as an IRF. The criterion is that a minimum percentage of a facility's total inpatient population must require intensive rehabilitative services for the treatment of at least one of 13 medical conditions listed in § 412.23(b)(2)(iii) in order for the facility to be classified as an IRF. In addition, for cost reporting periods beginning on or after July 1, 2004, and before July 1, 2008, a patient with a comorbidity as defined at § 412.602 may be included in the inpatient population that counts toward the required applicable percentage if certain requirements are met. The minimum percentage is known as the ''compliance threshold.''

Prior to the May 7, 2004 final rule (69 FR 25752), § 412.23(b)(2) stipulated that the compliance threshold was 75 percent. Therefore, the compliance threshold was commonly referred to as the ''75 percent rule.'' In addition, prior to the May 7, 2004 final rule the regulation only specified 10 medical conditions. However, in the May 7, 2004 final rule we revised § 412.23(b)(2), and

that revision increased the number of medical conditions to 13, as well as temporarily lowered the compliance threshold while at the same time specified a transition period at the end of which IRFs would once again have to meet a compliance threshold of 75 percent. Also, the revised regulation specified that during the compliance threshold transition period a patient's comorbidity may be used to determine if a provider met the compliance threshold provided certain applicable requirements were met.

In § 412.602 a comorbidity is defined as a specific patient condition that is secondary to the patient's principal diagnosis. A patient's principal diagnosis is the primary reason for the patient being admitted to an IRF, and this diagnosis is used to determine if the patient had a medical condition that can be counted towards meeting the compliance threshold. As specified in the May 7, 2004 final rule, in order for an inpatient with a certain comorbidity to be included in the inpatient population that counts toward the applicable percentage the following criteria must be met:

- The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions listed in § 412.23(b)(2)(iii).
- The patient also has a comorbidity that falls in one of the conditions listed in § 412.23(b)(2)(iii).
- The comorbidity has caused significant decline in functional ability in the individual such that, even in the absence of the admitting condition, the individual would require the intensive rehabilitation treatment that is unique to inpatient rehabilitation facilities paid under the IRF PPS and that cannot be appropriately performed in another care setting covered under this Title.

In accordance with the May 7, 2004 final rule, IRFs would have to meet a compliance threshold of 75 percent for cost reporting periods starting on or after July 1, 2007. However, Section 5005 of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171 modified the applicable time periods when the various compliance thresholds, as originally specified in the May 7, 2004 final rule, must be met.) The net effect of the DRA was extension of the compliance threshold transition period. Due to the DRA, the transition period was extended to include cost reporting periods starting on or after July 1, 2004, and before July 1, 2008. Therefore, in order to conform the regulations to the DRA, we revised § 412.23(b)(2) and stipulated that an IRF with a cost reporting period starting on or after July 1, 2008, instead of July 1, 2007, must meet the 75 percent compliance threshold. In addition, we also permitted a comorbidity that meets the criteria as specified in (b)(2)(i) to continue to be used to determine the compliance threshold for cost reporting periods beginning before July 1, 2008 instead of July 1, 2007. (For a complete description of all the changes made, see the FY 2007 IRF PPS final rule (71 FR 48354)).

For cost reporting periods beginning on or after July 1, 2008, comorbidities will not be eligible for inclusion in the calculations used to determine if the provider meets the 75 percent compliance threshold specified in § 412.23(b)(2)(ii). As the 75 percent rule is only partially phased in at this time and there are limitations to the policy conclusions that can be drawn from currently available claim and patient assessment data, this rule maintains existing policy. However, in the May 7, 2004 final rule (69 FR 25762), we encouraged research evaluating the continued use of comorbidities in determining compliance with the 75 percent rule. Therefore, we are soliciting comments supporting current policy or other options, including use of some or all of the existing comorbidities in calculating the compliance percentage for an additional fixed period of one or more years or to integrate the inclusion of some or all of the existing comorbidities on a permanent basis. In addition, we are soliciting comments that include clinical data based on scientifically sound research that provide evidence on these and other options.

III. Classification System for the Inpatient Rehabilitation Facility Prospective Payment System

[If you choose to comment on issues in this section, please include the caption ''Classification System for the Inpatient Rehabilitation Facility Prospective Payment System'' at the beginning of your comments.]

For the FY 2008 IRF PPS, we will use the same case-mix classification system that we used for FY 2007, as set forth in the FY 2007 IRF PPS final rule (71 FR 48354). Table 1 below, ''Relative Weights and Average Lengths of Stay for Case-Mix Groups'', presents the CMGs, the comorbidity tiers, the corresponding relative weights, and the average length of stay value for each CMG and tier. The average length of stay for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment. Because these data elements are not changing, Table 1 shown below is identical to Table 4 that was published in the FY 2007 IRF PPS final rule (71 FR 48354, 48364 through 48370). The methodology we used to construct the data elements in Table 1 is described in detail in the FY 2007 IRF PPS final rule (71 FR 48354).

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Table 1: Relative Weights and Average Lengths of Stay for Case-Mix Groups

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative Weights				Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0101	Stroke M>51.05	0.7707	0.7303	0.6572	0.6347	8	11	9	9
0102	Stroke M>44.45 and M<51.05 and C>18.5	0.9493	0.8995	0.8095	0.7818	11	15	11	10
0103	Stroke M>44.45 and M<51.05 and C<18.5	1.1192	1.0605	0.9544	0.9218	14	13	12	12
0104	Stroke M>38.85 and M<44.45	1.1885	1.1260	1.0134	0.9787	13	14	13	13
0105	Stroke M>34.25 and M<38.85	1.4261	1.3512	1.2161	1.1745	16	17	16	15
0106	Stroke M>30.05 and M<34.25	1.6594	1.5722	1.4150	1.3666	18	20	18	18
0107	Stroke M>26.15 and M<30.05	1.9150	1.8145	1.6330	1.5771	21	23	21	20
0108	Stroke M<26.15 and A>84.5	2.2160	2.0997	1.8897	1.8250	28	29	25	24

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative Weights				Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0109	Stroke M>22.35 and M<26.15 and A<84.5	2.1998	2.0843	1.8758	1.8116	23	26	24	23
0110	Stroke M<22.35 and A<84.5	2.6287	2.4907	2.2416	2.1649	30	33	28	27
0201	Traumatic brain injury M>53.35 and C>23.5	0.8143	0.6806	0.6080	0.5647	10	9	9	8
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5	1.0460	0.8743	0.7810	0.7254	12	10	11	9
0203	Traumatic brain injury M>44.25 and C<23.5	1.2503	1.0450	0.9335	0.8671	15	15	12	12
0204	Traumatic brain injury M>40.65 and M<44.25	1.3390	1.1192	0.9998	0.9287	15	16	13	13
0205	Traumatic brain injury M>28.75 and M<40.65	1.6412	1.3718	1.2254	1.1382	17	18	16	15
0206	Traumatic brain injury M>22.05 and M<28.75	2.1445	1.7924	1.6011	1.4873	23	22	21	20
0207	Traumatic brain injury M<22.05	2.7664	2.3122	2.0655	1.9185	35	29	26	25
0301	Non-traumatic brain injury M>41.05	1.1394	0.9533	0.8552	0.7772	12	12	11	10
0302	Non-traumatic brain injury M>35.05 and M<41.05	1.4875	1.2446	1.1164	1.0147	14	16	14	13
0303	Non-traumatic brain injury M>26.15 and M<35.05	1.7701	1.4810	1.3285	1.2074	20	19	17	16

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative Weights				Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0304	Non-traumatic brain injury M<26.15	2.4395	2.0410	1.8309	1.6640	32	25	23	21
0401	Traumatic spinal cord injury M>48.45	0.9587	0.8456	0.7722	0.6858	12	12	11	10
0402	Traumatic spinal cord injury M>30.35 and M<48.45	1.3256	1.1691	1.0676	0.9482	18	16	14	13
0403	Traumatic spinal cord injury M>16.05 and M<30.35	2.3069	2.0347	1.8580	1.6502	22	24	24	22
0404	Traumatic spinal cord injury M<16.05 and A>63.5	4.1542	3.6639	3.3458	2.9717	51	46	41	37
0405	Traumatic spinal cord injury M<16.05 and A<63.5	3.1371	2.7668	2.5266	2.2441	33	37	33	28
0501	Non-traumatic spinal cord injury M>51.35	0.7648	0.6455	0.5687	0.5071	9	8	8	7
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35	1.0262	0.8661	0.7630	0.6804	13	12	11	9
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15	1.3596	1.1476	1.0109	0.9014	15	15	13	12
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25	1.6984	1.4335	1.2628	1.1260	21	19	16	15
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25	2.0171	1.7025	1.4997	1.3373	23	22	19	18
0506	Non-traumatic spinal cord injury M<23.75	2.7402	2.3128	2.0374	1.8167	29	28	26	23
0601	Neurological M>47.75	0.8991	0.7330	0.7019	0.6522	11	10	9	9

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative Weights				Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0602	Neurological M>37.35 and M<47.75	1.1968	0.9757	0.9342	0.8682	13	13	13	12
0603	Neurological M>25.85 and M<37.35	1.5326	1.2495	1.1965	1.1118	17	17	15	15
0604	Neurological M<25.85	1.9592	1.5973	1.5295	1.4213	22	20	21	19
0701	Fracture of lower extremity M>42.15	0.9028	0.7717	0.7338	0.6617	12	11	10	9
0702	Fracture of lower extremity M>34.15 and M<42.15	1.1736	1.0033	0.9539	0.8602	13	14	13	12
0703	Fracture of lower extremity M>28.15 and M<34.15	1.4629	1.2506	1.1890	1.0722	16	17	16	14
0704	Fracture of lower extremity M<28.15	1.7969	1.5361	1.4605	1.3170	20	20	19	18
0801	Replacement of lower extremity joint M>49.55	0.6537	0.5504	0.5131	0.4607	7	7	7	6
0802	Replacement of lower extremity joint M>37.05 and M<49.55	0.8542	0.7193	0.6704	0.6020	10	10	9	8
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5	1.2707	1.0700	0.9974	0.8956	15	15	13	12

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative Weights				Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5	1.1040	0.9296	0.8665	0.7781	13	12	12	10
0805	Replacement of lower extremity joint M>22.05 and M<28.65	1.3927	1.1727	1.0931	0.9816	17	16	14	13
0806	Replacement of lower extremity joint M<22.05	1.6723	1.4082	1.3126	1.1787	18	19	17	15
0901	Other orthopedic M>44.75	0.8425	0.7641	0.6868	0.6120	10	11	10	9
0902	Other orthopedic M>34.35 and M<44.75	1.1088	1.0057	0.9039	0.8056	13	13	12	11
0903	Other orthopedic M>24.15 and M<34.35	1.4638	1.3277	1.1934	1.0635	18	19	16	15
0904	Other orthopedic M<24.15	1.8341	1.6636	1.4952	1.3325	25	23	21	19
1001	Amputation, lower extremity M>47.65	0.9625	0.8879	0.7957	0.7361	11	11	11	10
1002	Amputation, lower extremity M>36.25 and M<47.65	1.2709	1.1724	1.0507	0.9719	14	15	14	13
1003	Amputation, lower extremity M<36.25	1.7876	1.6491	1.4779	1.3671	19	22	19	18
1101	Amputation, non-lower extremity M>36.35	1.2554	1.0482	0.9225	0.8496	14	15	12	11

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative Weights				Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1102	Amputation, non-lower extremity M<36.35	1.8824	1.5717	1.3832	1.2739	19	19	18	17
1201	Osteoarthritis M>37.65	1.0177	0.8785	0.8182	0.7405	11	12	11	10
1202	Osteoarthritis M>30.75 and M<37.65	1.3168	1.1367	1.0586	0.9581	15	16	14	13
1203	Osteoarthritis M<30.75	1.6241	1.4020	1.3057	1.1817	21	19	17	16
1301	Rheumatoid, other arthritis M>36.35	1.0354	0.9636	0.8511	0.7429	12	13	11	10
1302	Rheumatoid, other arthritis M>26.15 and M<36.35	1.4321	1.3327	1.1772	1.0275	15	18	15	14
1303	Rheumatoid, other arthritis M<26.15	1.8250	1.6984	1.5002	1.3094	22	21	20	18
1401	Cardiac M>48.85	0.8160	0.7351	0.6534	0.5861	10	9	9	8
1402	Cardiac M>38.55 and M<48.85	1.1038	0.9944	0.8839	0.7928	12	13	12	11
1403	Cardiac M>31.15 and M<38.55	1.3705	1.2347	1.0975	0.9844	16	16	14	13
1404	Cardiac M<31.15	1.7370	1.5649	1.3910	1.2477	21	20	18	16
1501	Pulmonary M>49.25	0.9986	0.8870	0.7793	0.7399	11	13	10	10
1502	Pulmonary M>39.05 and M<49.25	1.2661	1.1246	0.9880	0.9381	13	15	12	12
1503	Pulmonary M>29.15 and M<39.05	1.5457	1.3730	1.2062	1.1453	16	16	15	15
1504	Pulmonary M<29.15	2.0216	1.7957	1.5775	1.4979	26	21	20	18
1601	Pain syndrome M>37.15	1.0070	0.8550	0.7774	0.6957	12	11	10	10

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative Weights				Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1602	Pain syndrome M>26.75 and M<37.15	1.3826	1.1739	1.0673	0.9552	15	17	14	13
1603	Pain syndrome M<26.75	1.7025	1.4455	1.3143	1.1762	19	19	18	16
1701	Major multiple trauma without brain or spinal cord injury M>39.25	0.9818	0.9641	0.8479	0.7368	12	12	11	10
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25	1.2921	1.2688	1.1158	0.9696	14	16	15	13
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05	1.5356	1.5080	1.3262	1.1524	17	20	18	16
1704	Major multiple trauma without brain or spinal cord injury M<25.55	1.9246	1.8899	1.6620	1.4443	26	26	22	19
1801	Major multiple trauma with brain or spinal cord injury M>40.85	1.1920	0.9866	0.8243	0.7342	15	13	13	10
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85	1.9058	1.5774	1.3179	1.1738	19	21	18	16
1803	Major multiple trauma with brain or spinal cord injury M<23.05	3.4302	2.8391	2.3721	2.1127	43	33	30	27

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative Weights				Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1901	Guillian Barre M>35.95	1.2399	1.0986	1.0965	0.9350	14	13	14	12
1902	Guillian Barre M>18.05 and M<35.95	2.3194	2.0552	2.0512	1.7491	27	25	25	23
1903	Guillian Barre M<18.05	3.3464	2.9651	2.9593	2.5235	37	39	31	33
2001	Miscellaneous M>49.15	0.8734	0.7381	0.6735	0.6084	10	10	9	8
2002	Miscellaneous M>38.75 and M<49.15	1.1447	0.9674	0.8827	0.7975	12	13	12	11
2003	Miscellaneous M>27.85 and M<38.75	1.4777	1.2488	1.1395	1.0294	16	16	15	14
2004	Miscellaneous M<27.85	1.9716	1.6662	1.5204	1.3735	25	22	20	18
2101	Burns M>0	2.1842	2.1842	1.6606	1.4587	27	24	20	17
5001	Short-stay cases, length of stay is 3 days or fewer				0.2201				2
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.6351				8
5102	Expired, orthopedic, length of stay is 14 days or more				1.5985				22
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.7203				8
5104	Expired, not orthopedic, length of stay is 16 days or more				1.8784				24

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IV. Proposed FY 2008 IRF PPS Federal Prospective Payment Rates

[If you choose to comment on issues in this section, please include the caption ''Proposed FY 2008 IRF PPS Federal Prospective Payment Rates'' at the beginning of your comments.]

A. Proposed FY 2008 IRF PPS Market Basket Increase Factor and Labor-Related Share

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over

time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. In updating the FY 2008 payment rates outlined in this proposed rule, CMS applied an appropriate increase factor to the FY 2007 IRF PPS payment rates that is based on the rehabilitation, psychiatric, and long-term care hospital (RPL) market basket. In constructing the RPL market basket, we used the methodology set forth in the FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47915).

As discussed in that final rule, the RPL market basket primarily uses the Bureau of Labor Statistics' (BLS) data as price proxies, which are grouped in one of the three BLS categories: Producer Price Indexes (PPI), Consumer Price Indexes (CPI), and Employment Cost Indexes (ECI). We evaluated and selected these particular price proxies using the criteria of reliability, timeliness, availability, and relevance, and believe they continue to be the best measures of price changes for the cost categories.

As discussed in the FY 2007 IRF PPS proposed rule, beginning April 2006 with the publication of March 2006 data, the BLS'' ECI has used a different classification system, the North American Industrial Classification System (NAICS), instead of the Standard Industrial Codes (SIC). We have consistently used the ECI as the data source for our wages and salaries and other price proxies in the RPL market basket and did not make any changes. This proposed rule's estimated FY 2008 IRF market basket increase factor and labor-related share will be updated for the final rule based on the most recent data available from the BLS.

We will use the same methodology described in the FY 2006 IRF PPS final rule to compute the FY 2008 IRF market basket increase factor and labor-related share. For this proposed rule, the FY 2008 IRF market basket increase factor is 3.3 percent. This is based on Global Insight, Inc.'s forecast for the first quarter of 2007 (2007q1) with historical data through the fourth quarter of 2006 (2006q4). We propose to update the market basket with more recent data for the final rule to the extent it is available. However, we note that the President's budget includes a proposal for a zero percent update in the IRF market basket for FY 2008, and that the provisions outlined in this proposed rule would need to reflect any legislation that the Congress enacts to adopt this proposal.

In addition, we have used the methodology described in the FY 2006 IRF PPS final rule to update the labor-related share for FY 2008. In FY 2004, we updated the 1992 market basket data to 1997 based on the methodology described in the August 1, 2003 final rule (68 FR 45688 through 45689). As discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47915 through 47917), we rebased and revised the market basket for FY 2006 using the 2002-based cost structures for IRFs, IPFs, and LTCHs to determine the FY 2006 labor-related share. For FY 2007, we used the same methodology discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47917) to determine the FY 2007 IRF labor-related share. For FY 2008, we continue to use the same methodology discussed in the FY 2006 IRF PPS final rule. As shown in Table 2, the total FY 2008 RPL labor-related share is 75.846 percent in this proposed rule. We propose to update the labor-related share with more recent data for the final rule to the extent it is available.

TABLE 2.—PROPOSED FY 2008 IRF LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	Proposed FY 2008 IRF labor-related relative importance
Wages and salaries	52.640
Employee benefits	14.149
Professional fees	2.907
All other labor intensive services	2.147
Subtotal	71.843
Labor-related share of capital costs	4.003
Total	75.846

SOURCE: Global Insight, Inc, 1st Qtr, 2007; @USMACRO/CONTROL0307 @CISSIM/TL0207.SIM Historical Data through 4th QTR, 2006

B. Proposed Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs attributable to wages and wage-related costs by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act for a FY are made in a budget neutral manner.

In the FY 2007 IRF PPS final rule, we maintained the methodology described in the FY 2006 IRF PPS final rule to determine the wage index, labor market area definitions, and hold harmless policy consistent with the rationale outlined in that final rule (70 FR 47880, 47917 through 47933). In the FY 2006 IRF PPS final rule, we adopted a 3-year hold harmless policy specifically for rural IRFs whose labor market designations changed from rural to urban under the CBSA-based labor market area designations. This policy specifically applied to IRFs that had been previously designated rural and which, effective for discharges on or after October 1, 2005, would otherwise have become ineligible for the 19.14 percent rural adjustment. For FY 2008, the third and final year of the 3-year phase-out of the budget-neutral hold harmless policy, we will no longer apply an adjustment for IRFs that meet the criteria described in the FY 2006 final rule (70 FR 47880, 47923 through 47926).

For FY 2008, we propose to maintain the policies and methodologies described in the FY 2007 IRF PPS final rule relating to the labor market area definitions, the wage index methodology for areas with wage data, and hold harmless policy consistent with the rationale outlined in the FY 2006 IRF PPS final rule (70 FR 47880, 47917 through 47933). Therefore, this proposed rule continues to use the Core-Based Statistical Area (CBSA) labor market area definitions and the pre-reclassification and pre-floor hospital wage index based on 2003 cost report data. In addition, the budget neutral hold harmless policy established in the FY 2006 final rule will expire for discharges occurring on or after October 1, 2007.

In adopting the CBSA geographic designations in FY 2006, we provided a one-year transition with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2001 hospital data). We referred to the blended wage index as the FY 2006 IRF PPS transition wage index. As discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47926), subsequent to the expiration of this one-year transition on September 30, 2006, we used the full CBSA-based wage index values as published in the Addendum of the FY 2007 IRF PPS final rule (71 FR 48354) and in the Addendum of this proposed rule.

When adopting OMB's new labor market designations, we identified some geographic areas where there were no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index (70 FR 47880).

In this proposed rule, we are proposing to revise our methodology to determine a proxy for rural areas without hospital wage data. Under the CBSA labor market areas, there are no rural hospitals in rural Massachusetts and rural Puerto Rico. Because there was no rural proxy for more recent rural data within those areas, we used the FY 2006 wage index value in both FY 2006 and FY 2007 for rural Massachusetts and rural Puerto Rico.

Due to the use of the same wage index value (from FY 2006) for these areas for two fiscal years, we believe it is appropriate at this point to consider alternatives in our methodology to update the wage index for rural areas without rural hospital wage index data. We believe that the best imputed proxy would 1) use pre-floor, pre-reclassified hospital data, 2) be easy to evaluate, 3) use the most local data, and 4) be easily updateable from year-to-year. Since the implementation of the IRF PPS, we have used the pre-floor, pre-reclassified hospital wage data that is easy to evaluate and is updateable from year-to-year. In addition, the IRF PPS wage index is based on hospitals' cost report data, which reflects local available data. Therefore, we believe the imputed proxy for a rural area without hospital wage data is consistent with our past methodology and other post-acute PPS wage index policy. Although our current methodology uses rural pre-floor, pre-reclassified hospital wage data, this method is not updateable from year-to-year.

Therefore, in cases where there is a rural area without rural hospital wage data, we propose using the average wage index from all contiguous CBSAs to represent a reasonable proxy for the rural area within a State. While this approach does not use rural data, it does use pre-floor, pre-reclassified hospital wage data, it is easy to evaluate, it is updateable from year-to-year, and it uses the most local data available.

In determining an imputed rural wage index, we interpret the term ''contiguous'' to mean sharing a border. For example, in the case of Massachusetts, the entire rural area consists of Dukes and Nantucket counties. We have determined that the borders of Dukes and Nantucket counties are local and contiguous with Barnstable and Bristol counties. Under the proposed methodology, the wage indexes for the counties of Barnstable (CBSA 12700: 1.2539) and Bristol (CBSA 39300: 1.0783) are averaged, resulting in an imputed rural wage index of 1.1661 for rural Massachusetts for FY 2008. While we believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type, such as a CAH, that does not submit the appropriate wage data), we may re-examine this policy should a similar situation arise in the future.

However, we do not believe that this policy is appropriate for Puerto Rico. There are sufficient economic differences between hospitals in the United States and those in Puerto Rico (including the payment of hospitals in Puerto Rico using blended Federal/Commonwealth-specific rates) that a separate and distinct policy for Puerto Rico is necessary. Consequently, any alternative methodology for imputing a wage index for rural Puerto Rico would need to take into account these economic differences and the payment rates hospitals receive in Puerto Rico. Our policy of imputing a rural wage index based on the wage index(es) of CBSAs contiguous to the rural area in question does not recognize the unique circumstances of Puerto Rico. While we have not yet identified an alternative methodology for imputing a wage index for rural Puerto Rico, we will continue to evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources. By maintaining our current policy for Puerto Rico, we will maintain consistency with other post-acute care PPS wage index policies. Accordingly, we propose to continue using the most recent wage index previously available for Puerto Rico; that is, a wage index of 0.4047. We solicit comments on our proposal to maintain the current wage index policy for rural Puerto Rico.

In the FY 2006 IRF PPS final rule (70 FR 47880, 47920), we notified the public that the Office of Management and Budget (OMB) published a bulletin that changed the titles to certain CBSAs after the publication of our FY 2006 IRF PPS proposed rule (70 FR 30186). Since the publication of the FY 2006 IRF PPS final rule, OMB published additional bulletins that updated the CBSAs. Specifically, OMB added or deleted certain CBSA numbers and revised certain titles. Accordingly, in this proposed rule, we are proposing to clarify that this and all subsequent IRF PPS rules and notices are considered to incorporate the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current IRF PPS wage index. The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bulletins/index.html*.

To calculate the wage-adjusted facility payment for the payment rates set forth in this proposed rule, we multiply the unadjusted Federal prospective payment by the proposed FY 2008 RPL labor-related share (75.846 percent) to determine the labor-related portion of the Federal prospective payments. We then multiply this labor-related portion by the applicable proposed IRF wage index shown in Table 1 for urban areas and Table 2 for rural areas in the Addendum.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner; therefore, we calculated a budget neutral wage adjustment factor as established in the August 1, 2003 final rule and codified at § 412.624(e)(1), and described in the steps below. We propose to use the following steps to ensure that the FY 2008 IRF standard payment conversion factor reflects the update to the proposed wage indexes (based on the FY 2003 pre-reclassified and pre-floor hospital wage data) and the proposed labor-related share in a budget neutral manner:

Step 1 Determine the total amount of the estimated FY 2007 IRF PPS rates, using the FY 2007 standard payment conversion factor and the labor-related share and the wage indexes from FY 2007 (as published in the FY 2007 IRF PPS final rule).

Step 2 Calculate the total amount of estimated IRF PPS payments, using the FY 2007 standard payment conversion factor and the proposed FY 2008 labor-related share and proposed CBSA urban and rural wage indexes.

Step 3 Divide the amount calculated in step 1 by the amount calculated in step 2, which equals the FY 2008 budget neutral wage adjustment factor of 1.0026.

Step 4 Apply the FY 2008 budget neutral wage adjustment factor from step 3 to the FY 2007 IRF PPS standard payment conversion factor after the application of the estimated market basket update to determine the FY 2008 standard payment conversion factor.

C. Description of the Proposed IRF Standard Payment Conversion Factor and Proposed Payment Rates for FY 2008

To calculate the proposed standard payment conversion factor for FY 2008 and as illustrated in Table 3 below, we begin by applying the estimated market

basket increase factor (3.3 percent) to the standard payment conversion factor for FY 2007 ($12,981), which equals $13,409. We then apply the proposed combined budget neutrality factor for the wage index and labor related share and final year of the hold harmless policy of 1.0040 (1.0026 * 1.0014 = 1.0040), which would result in a proposed standard payment conversion factor of $13,463.

TABLE 3.—CALCULATIONS TO DETERMINE THE PROPOSED FY 2008 STANDARD PAYMENT CONVERSION FACTOR

Explanation for adjustment	Calculations
FY 2007 Standard Payment Conversion Factor	12,981
Proposed FY 2008 Market Basket Increase Factor	× 1.033
Subtotal	= 13,409
Proposed Budget Neutrality Factor for the Wage Index, Labor-Related Share, and the Hold Harmless Provision	× 1.0040
Proposed FY 2008 Standard Payment Conversion Factor	= $13,463

After the application of the relative weights, the resulting proposed unadjusted IRF prospective payment rates for FY 2008 are shown below in Table 4, ''Proposed FY 2008 Payment Rates.''

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Table 4: FY 2008 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	$10,375.93	$9,832.03	$8,847.88	$8,544.97
0102	$12,780.43	$12,109.97	$10,898.30	$10,525.37
0103	$15,067.79	$14,277.51	$12,849.09	$12,410.19
0104	$16,000.78	$15,159.34	$13,643.40	$13,176.24
0105	$19,199.58	$18,191.21	$16,372.35	$15,812.29
0106	$22,340.50	$21,166.53	$19,050.15	$18,398.54
0107	$25,781.65	$24,428.61	$21,985.08	$21,232.50
0108	$29,834.01	$28,268.26	$25,441.03	$24,569.98
0109	$29,615.91	$28,060.93	$25,253.90	$24,389.57
0110	$35,390.19	$33,532.29	$30,178.66	$29,146.05
0201	$10,962.92	$9,162.92	$8,185.50	$7,602.56
0202	$14,082.30	$11,770.70	$10,514.60	$9,766.06

Table 4: FY 2008 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0203	$16,832.79	$14,068.84	$12,567.71	$11,673.77
0204	$18,026.96	$15,067.79	$13,460.31	$12,503.09
0205	$22,095.48	$18,468.54	$16,497.56	$15,323.59
0206	$28,871.40	$24,131.08	$21,555.61	$20,023.52
0207	$37,244.04	$31,129.15	$27,807.83	$25,828.77
0301	$15,339.74	$12,834.28	$11,513.56	$10,463.44
0302	$20,026.21	$16,756.05	$15,030.09	$13,660.91
0303	$23,830.86	$19,938.70	$17,885.60	$16,255.23
0304	$32,842.99	$27,477.98	$24,649.41	$22,402.43
0401	$12,906.98	$11,384.31	$10,396.13	$9,232.93
0402	$17,846.55	$15,739.59	$14,373.10	$12,765.62
0403	$31,057.79	$27,393.17	$25,014.25	$22,216.64
0404	$55,927.99	$49,327.09	$45,044.51	$40,008.00
0405	$42,234.78	$37,249.43	$34,015.62	$30,212.32
0501	$10,296.50	$8,690.37	$7,656.41	$6,827.09
0502	$13,815.73	$11,660.30	$10,272.27	$9,160.23
0503	$18,304.29	$15,450.14	$13,609.75	$12,135.55
0504	$22,865.56	$19,299.21	$17,001.08	$15,159.34
0505	$27,156.22	$22,920.76	$20,190.46	$18,004.07
0506	$36,891.31	$31,137.23	$27,429.52	$24,458.23
0601	$12,104.58	$9,868.38	$9,449.68	$8,780.57
0602	$16,112.52	$13,135.85	$12,577.13	$11,688.58
0603	$20,633.39	$16,822.02	$16,108.48	$14,968.16
0604	$26,376.71	$21,504.45	$20,591.66	$19,134.96
0701	$12,154.40	$10,389.40	$9,879.15	$8,908.47
0702	$15,800.18	$13,507.43	$12,842.36	$11,580.87
0703	$19,695.02	$16,836.83	$16,007.51	$14,435.03
0704	$24,191.66	$20,680.51	$19,662.71	$17,730.77
0801	$8,800.76	$7,410.04	$6,907.87	$6,202.40
0802	$11,500.09	$9,683.94	$9,025.60	$8,104.73
0803	$17,107.43	$14,405.41	$13,428.00	$12,057.46
0804	$14,863.15	$12,515.20	$11,665.69	$10,475.56
0805	$18,749.92	$15,788.06	$14,716.41	$13,215.28
0806	$22,514.17	$18,958.60	$17,671.53	$15,868.84

Table 4: FY 2008 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0901	$11,342.58	$10,287.08	$9,246.39	$8,239.36
0902	$14,927.77	$13,539.74	$12,169.21	$10,845.79
0903	$19,707.14	$17,874.83	$16,066.74	$14,317.90
0904	$24,692.49	$22,397.05	$20,129.88	$17,939.45
1001	$12,958.14	$11,953.80	$10,712.51	$9,910.11
1002	$17,110.13	$15,784.02	$14,145.57	$13,084.69
1003	$24,066.46	$22,201.83	$19,896.97	$18,405.27
1101	$16,901.45	$14,111.92	$12,419.62	$11,438.16
1102	$25,342.75	$21,159.80	$18,622.02	$17,150.52
1201	$13,701.30	$11,827.25	$11,015.43	$9,969.35
1202	$17,728.08	$15,303.39	$14,251.93	$12,898.90
1203	$21,865.26	$18,875.13	$17,578.64	$15,909.23
1301	$13,939.59	$12,972.95	$11,458.36	$10,001.66
1302	$19,280.36	$17,942.14	$15,848.64	$13,833.23
1303	$24,569.98	$22,865.56	$20,197.19	$17,628.45
1401	$10,985.81	$9,896.65	$8,796.72	$7,890.66
1402	$14,860.46	$13,387.61	$11,899.95	$10,673.47
1403	$18,451.04	$16,622.77	$14,775.64	$13,252.98
1404	$23,385.23	$21,068.25	$18,727.03	$16,797.79
1501	$13,444.15	$11,941.68	$10,491.72	$9,961.27
1502	$17,045.50	$15,140.49	$13,301.44	$12,629.64
1503	$20,809.76	$18,484.70	$16,239.07	$15,419.17
1504	$27,216.80	$24,175.51	$21,237.88	$20,166.23
1601	$13,557.24	$11,510.87	$10,466.14	$9,366.21
1602	$18,613.94	$15,804.22	$14,369.06	$12,859.86
1603	$22,920.76	$19,460.77	$17,694.42	$15,835.18
1701	$13,217.97	$12,979.68	$11,415.28	$9,919.54
1702	$17,395.54	$17,081.85	$15,022.02	$13,053.72
1703	$20,673.78	$20,302.20	$17,854.63	$15,514.76
1704	$25,910.89	$25,443.72	$22,375.51	$19,444.61
1801	$16,047.90	$13,282.60	$11,097.55	$9,884.53
1802	$25,657.79	$21,236.54	$17,742.89	$15,802.87
1803	$46,180.78	$38,222.80	$31,935.58	$28,443.28
1901	$16,692.77	$14,790.45	$14,762.18	$12,587.91

Table 4: FY 2008 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1902	$31,226.08	$27,669.16	$27,615.31	$23,548.13
1903	$45,052.58	$39,919.14	$39,841.06	$33,973.88
2001	$11,758.58	$9,937.04	$9,067.33	$8,190.89
2002	$15,411.10	$13,024.11	$11,883.79	$10,736.74
2003	$19,894.28	$16,812.59	$15,341.09	$13,858.81
2004	$26,543.65	$22,432.05	$20,469.15	$18,491.43
2101	$29,405.88	$29,405.88	$22,356.66	$19,638.48
5001	$0.00	$0.00	$0.00	$2,963.21
5101	$0.00	$0.00	$0.00	$8,550.35
5102	$0.00	$0.00	$0.00	$21,520.61
5103	$0.00	$0.00	$0.00	$9,697.40
5104	$0.00	$0.00	$0.00	$25,288.90

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D. Example of the Methodology for Adjusting the Proposed Federal Prospective Payment Rates

Table 5 illustrates the proposed methodology for adjusting the Federal prospective payments (as described in sections IV.A through C of this proposed rule). The examples below are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) can be found in Table 4 above.

One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a non-teaching hospital, has a disproportionate share hospital (DSH) percentage of 5 percent (which results in a LIP adjustment of 1.0309), a wage index of 0.8538, and an applicable rural adjustment of 21.3 percent. Facility B, a teaching hospital, has a DSH percentage of 15 percent (which results in a LIP adjustment of 1.0910), a wage index of 0.9118, and an applicable teaching status adjustment of 0.109.

To calculate each IRF's labor and non-labor portion of the Federal prospective payment, we begin by taking the unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) from Table 4 above. Then, we multiply the estimated labor-related share (75.846) described in section IV.A by the unadjusted Federal prospective payment rate. To determine the non-labor portion of the Federal prospective payment rate, we subtract the labor portion of the Federal payment from the unadjusted Federal prospective payment.

To compute the wage-adjusted Federal prospective payment, we multiply the result of the labor portion of the Federal payment by the appropriate wage index found in the Addendum in Tables 1 and 2, which will result in the wage-adjusted amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted amount to the non-labor portion.

To adjust the Federal prospective payment by the facility-level adjustments, there are several steps. First, we take the wage-adjusted Federal prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Then, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.109, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted Federal prospective payment rate. Table 5 illustrates the components of the proposed adjusted payment calculation.

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Table 5: Example of Computing an IRF's Proposed FY 2008 Federal Prospective Payment

Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)	
1	Unadjusted Federal Prospective Payment		$29,146.05		$29,146.05
2	Labor Share	X	0.75846	X	0.75846
3	Labor Portion of Federal Payment	=	$22,106.11	=	$22,106.11
4	CBSA Based Wage Index (shown in the Addendum , Tables 1 and 2)	X	0.8538	X	0.9118
5	Wage-Adjusted Amount	=	$18,874.20	=	$20,156.35
6	Non-labor Amount	+	$7,039.94	+	$7,039.94
7	Wage-Adjusted Federal Payment	=	$25,914.14	=	$27,196.29
8	Rural Adjustment	X	1.213	X	1.000
9	Wage- and Rural- Adjusted Federal Payment	=	$31,433.85	=	$27,196.29
10	LIP Adjustment	X	1.0309	X	1.0910
11	FY2007 Wage-, Rural- and LIP-Adjusted Federal Prospective Payment Rate	=	$32,405.16	=	$29,671.16
12	FY 2007 Wage- and Rural-Adjusted Federal Prospective Payment		$31,433.86		$27,196.29
Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)	
13	Teaching Status Adjustment	X	0.000	X	0.109
14	Teaching Status Adjustment Amount	=	$0.00	=	$2,964.40
15	FY2007 Wage-, Rural-, and LIP-Adjusted Federal Prospective Payment Rate	+	$32,405.16	+	$29,671.16
16	Total FY 2007 Adjusted Federal Prospective Payment	=	$32,405.16	=	$32,635.56

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Thus, the proposed adjusted payment for Facility A would be $32,405.16 and the proposed adjusted payment for Facility B would be $32,635.56.

V. Update to Payments for High-Cost Outliers Under the IRF PPS

[If you choose to comment on issues in this section, please include the caption ''High-Cost Outliers Under the IRF PPS'' at the beginning of your comments.]

A. Proposed Update to the Outlier Threshold Amount for FY 2008

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge ratio (CCR) by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the August 7, 2001 final rule (66 FR 41316, 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 and 2007 IRF PPS final rules (70 FR 47880 and 71 FR 48354) to maintain estimated outlier payments at 3 percent of total estimated payments,

and we also stated that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

For this proposed rule, we performed an updated analysis of FY 2005 claims and IRF–PAI data using the same methodology we used to set the initial outlier threshold amount when we first implemented the IRF PPS in the August 7, 2001 final rule (66 FR 41316), which is also the same methodology we used to update the outlier threshold amounts for FYs 2006 and 2007. Using the updated FY 2005 claims and IRF–PAI data, we estimate that IRF outlier payments as a percentage of total estimated payments for FY 2007 increased from 3 percent using the FY 2004 data to approximately 3.8 percent using the updated FY 2005 data. We are still investigating the reasons for the change in estimated outlier payments between FY 2004 and FY 2005, and will carefully evaluate all possible reasons for this change.

Based on the updated analysis using FY 2005 data, and consistent with the broad statutory authority conferred upon the Secretary in sections 1886(j)(4)(A)(i) and 1886(j)(4)(A)(ii) of the Act, we propose to update the outlier threshold amount to $7,522 to decrease estimated outlier payments from approximately 3.8 to 3 percent of total estimated aggregate IRF payments for FY 2008.

The outlier threshold amount for FY 2008 is subject to change in the final rule based on analysis of updated data.

B. Update to the IRF Cost-to-Charge Ratio Ceilings

In accordance with the methodology stated in the August 1, 2003 final rule (68 FR 45692 through 45694), we apply a ceiling to IRFs' cost-to-charge ratios (CCRs). Using the methodology described in that final rule, we propose to update the national urban and rural CCRs for IRFs. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean, which we propose to set at 1.55 (based on the current estimate) for FY 2008.
- Other IRFs for whom accurate data with which to calculate an overall CCR are not available.

Specifically, for FY 2008, we estimate a proposed national CCR of 0.589 for rural IRFs and 0.475 for urban IRFs. For new facilities, we use these national ratios until the data become available for us to compute the facility's actual CCR using the first tentative settled or final settled cost report data, which we will then use for the subsequent cost reporting period. We note that the proposed national average rural and urban CCRs and our estimate of 3 standard deviations above the corresponding national geometric mean in this section are subject to change in the final rule based on updated analysis and data.

C. Adjustment of IRF Outlier Payments

In the August 1, 2003 final rule (68 FR 45674, 45693 through 45694), we finalized a proposal to make IRF outlier payments subject to reconciliation when IRFs' cost reports are settled, consistent with the policy adopted for IPPS hospitals in the June 9, 2003 IPPS final rule (68 FR 34494, 34501). The revised methodology provides for retroactive adjustments to IRF outlier payments to account for differences between the CCRs from the latest settled cost report and the actual CCRs computed at the time the cost report that coincides with the date of discharge is settled using the cost and charge data from that cost report. This revised methodology addresses vulnerabilities found in the IPPS and the IRF outlier payment policies, which may have resulted in outlier payments that were too high or too low. Along these lines, we are analyzing IRF outlier payments from the beginning of the IRF PPS through FY 2005, obtained from IRFs' cost report filings, to identify specific payment vulnerabilities in the IRF outlier payment policy.

Under this policy, which is outlined in § 412.624(e)(5), which in turn references § 412.84(i) and § 412.84(m) of the IPPS regulations, outlier payments will be processed on an interim basis throughout the year using IRFs' CCRs based on the best information available at the time. When an IRF's cost report is settled, any reconciliation of outlier payments by fiscal intermediaries will be based on the relationship between an IRF's costs and charges at the time a particular discharge actually occurred. This revised methodology ensures that the final outlier payments reflect an accurate assessment of the actual costs the IRF incurred for treating the case.

We have not yet issued instructions to the fiscal intermediaries regarding IRF outlier reconciliation because we have been analyzing the data and assessing the systems changes necessary to conduct the reconciliation. Thus, we will soon issue instructions to fiscal intermediaries to begin reconciling IRF outlier payments upon settlement of IRF cost reports.

VI. Clarification to the Regulation Text for Special Payment Provisions for Patients That Are Transferred

[If you choose to comment on issues in this section, please include the caption ''Clarification to the Regulation Text for Special Payment Provisions for Patients that are Transferred'' at the beginning of your comments.]

Section 125(a)(3) of the BBRA amended Section 1886(j)(1) of the Act by adding a paragraph (E) that states ''Construction relating to transfer authority—Nothing in this subsection shall be construed as preventing the Secretary from providing for an adjustment to payments to take into account the early transfer of a patient from a rehabilitation facility to another site of care.'' In the FY 2002 proposed and final IRF PPS rules, we proposed and adopted the transfer payment policy under § 412.624(f). The transfer policy provides payments that more accurately reflect facility resources used and services delivered for patients that transfer to another site of care as discussed in the FY 2002 IRF PPS final rule (66 FR 41316, 41353 through 41355). We are proposing to revise our regulations text to clarify our existing policy under § 412.624(f).

In the FY 2002 IRF PPS final rule (66 FR 41316, 41353 through 41355), we discuss our rationale, criteria for defining a transfer case, and the methodology to determine the unadjusted Federal prospective payment for the transfer case. In addition, we discuss several adjustments that we apply to the unadjusted Federal prospective payment rate. The final adjustments described in the FY 2002 IRF PPS final rule (65 FR 66304, 66347 through 66357) include the area wage adjustment, rural adjustment, the LIP adjustment, and the high-cost outlier adjustment. In our FY 2006 IRF PPS final rule (70 FR 47880), we refined the facility level adjustments and also adopted a teaching status adjustment.

We define a transfer under § 412.602 to mean the release of a Medicare inpatient from an IRF to another IRF, a short-term, acute-care prospective payment hospital, a long-term care hospital as described in § 412.23(e), or a nursing home that qualifies to receive Medicare or Medicaid payment. In order to receive a transfer payment under § 412.624(f), a patient must be transferred to another site of care as defined in § 412.602 and had to have stayed in the IRF for less than the average length of stay for the case-mix

group (CMG). Table 1 in this proposed rule presents the CMGs, the comorbidity tiers, the corresponding relative weights, and the average length of stay value for each CMG and tier. We use the average length of stay for each CMG to determine when an IRF discharge meets the definition of a transfer, which results in a per diem case level adjustment.

Since the implementation of the IRF PPS, we determine whether a claim meets the high-cost outlier policy under § 412.624(e)(5), as revised in the FY 2007 IRF PPS final rule (71 FR 48354, 48382 through 48383). A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold, in which case we make an outlier payment equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold. Since the implementation of the IRF PPS, we have provided an additional high-cost outlier payment to both transfer cases and full CMG cases when applicable. We propose to clarify the regulations text to articulate the transfer policy more clearly. Specifically, we propose to add the phrase ''subject to paragraph (e)(5)'' at the end of the paragraph under § 412.624(f)(2)(v). The proposed revised § 412.624(f)(2)(v) will read, ''By applying the adjustment described in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(7) of this section to the unadjusted payment amount determined in paragraph (f)(2)(iv) of this section to equal the adjusted transfer payment amount, subject to paragraph (e)(5).''

VII. Provisions of the Proposed Regulation

[If you choose to comment on issues in this section, please include the caption ''Provisions of the Proposed Regulations'' at the beginning of your comments.]

We are proposing to make revisions to the regulation text in order to implement the proposed policy changes for IRFs for FY 2007 and subsequent fiscal years. Specifically, we are proposing to make conforming changes in 42 CFR part 412. We discuss these proposed revisions and others in detail below.

A. Section 412.624 Methodology for Calculating the Federal Prospective Payment Rates

In this section, we are proposing to revise the current regulations text in paragraph (f)(2)(v) to clarify that we determine whether a high-cost outlier payment would be applicable for transfer cases. We emphasize that this is not a change to our current methodology for determining whether a high-cost outlier payment applies to transfer cases.

B. Additional Proposed Changes

- Update the FY 2008 IRF PPS payment rates by the proposed market basket, as discussed in section IV.A.
- Update the FY 2008 IRF PPS payment rates by the proposed wage index and the labor related share in a budget neutral manner, as discussed in section IV.A and B.
- Update the pre-reclassified and pre-floor wage indexes based on the CBSA changes published in the most recent OMB bulletins that apply to the hospital wage data used to determine the current IRF PPS wage index, as discussed in section IV.B.
- Implement the final year of the three-year hold harmless policy adopted in the FY 2006 IRF PPS final rule (70 FR 47880, 447923 through 47926) in a budget neutral manner, as discussed in section IV.B.
- Update the outlier threshold amount for FY 2008 to $7,522, as discussed in section V.A.
- Update the cost-to-charge ratio ceiling and the national average urban and rural cost-to-charge ratios for purposes of determining outlier payments under the IRF PPS, as discussed in section V.B.

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IX. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

X. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption ''Regulatory Impact Analysis'' at the beginning of your comments.]

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA, September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This proposed rule is a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the impact to the Medicare program, and the annual effects to the overall economy, would be more than $100 million. We estimate that the total impact of these proposed changes for estimated FY 2008 payments compared to estimated FY 2007 payments would be an increase of approximately $150 million (this reflects a $200 million increase from the update to the payment rates and a $50 million decrease due to the proposed update to the outlier threshold amount to decrease estimated outlier payments from approximately 3.8 percent in FY 2007 to 3 percent in FY 2008).

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government jurisdictions. Most IRFs and most other providers and suppliers are considered small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any one year. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432, November 17, 2000.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,200 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. The Department of Health and Human

Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 6, we estimate that the net revenue impact of this proposed rule on all IRFs is to increase estimated payments by about 2.4 percent, with an estimated increase in payments of 3 percent or higher for some categories of IRFs (such as rural freestanding IRFs, urban IRFs in the East North Central and Mountain regions, and rural IRFs in the Middle Atlantic and East South Central regions). Thus, we anticipate that this proposed rule may have a significant impact on a substantial number of small entities. However, the estimated impact of this proposed rule is a net increase in revenues across all categories of IRFs, so we believe that this proposed rule would not impose a significant burden on small entities. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this proposed rule would not have an adverse impact on rural hospitals based on the data of the 199 rural units and 20 rural hospitals in our database of 1,234 IRFs for which data were available.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995, updated annually for inflation. That threshold level is currently approximately $120 million. This proposed rule would not mandate any requirements for State, local, or tribal governments, nor would it affect private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this proposed rule would not have a substantial effect on State and local governments.

B. Anticipated Effects of the Proposed Rule

We discuss below the impacts of this proposed rule on the budget and on IRFs.

1. Basis and Methodology of Estimates

This proposed rule sets forth updates of the IRF PPS rates contained in the FY 2007 final rule, proposes an update to the outlier threshold for high-cost cases, and proposes an adjustment to the wage index methodology.

Based on the above, we estimate that the FY 2008 impact would be a net increase of $150 million in payments to IRF providers (this reflects a $200 million estimated increase from the proposed update to the payment rates and a $50 million estimated decrease due to the proposed update to the outlier threshold amount to decrease the estimated outlier payments from approximately 3.8 percent in FY 2007 to 3 percent in FY 2008). The impact analysis in Table 6 of this proposed rule represents the projected effects of the proposed policy changes in the IRF PPS for FY 2008 compared with estimated IRF PPS payments in FY 2007 without the proposed policy changes. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these proposed changes, except where noted, and we do not make adjustments for future changes in such variables as number of discharges or case-mix, except where noted.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, the MMA, the DRA, or new statutory provisions. Although these changes may not be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2008, we proposed a number of standard annual revisions and clarifications mentioned elsewhere in this proposed rule (for example, the update to the wage and market basket indexes used to adjust the Federal rates). We estimate that these proposed revisions would increase payments to IRFs by approximately $200 million.

The aggregate change in estimated payments associated with this proposed rule is estimated to be an increase in payments to IRFs of $150 million for FY 2008. The market basket increase of $200 million and the $50 million decrease due to the proposed update to the outlier threshold amount to decrease estimated outlier payments from approximately 3.8 percent in FY 2007 to 3.0 percent in FY 2008 would result in a net change in estimated payments from FY 2007 to FY 2008 of $150 million.

The effects of the proposed changes that affect IRF PPS payment rates are shown in Table 6. The following proposed changes that affect the IRF PPS payment rates are discussed separately below:

- The effects of the proposed update to the outlier threshold amount to decrease total estimated outlier payments from approximately 3.8 to 3 percent of total estimated payments for FY 2008, consistent with section 1886(j)(4) of the Act.
- The effects of the annual market basket update (using the RPL market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and 1886(j)(3)(C) of the Act.
- The effects of applying the budget-neutral labor-related share and wage index adjustment, including a proposal to revise our methodology to determine a proxy for rural areas without hospital wage data (as described in section IV of this proposed rule), as required under section 1886(j)(6) of the Act.
- The effects of the final year of the 3-year budget-neutral hold-harmless policy for IRFs that were rural under § 412.602 during FY 2005, but are urban under § 412.602 beginning FY 2006 and lose the rural adjustment, resulting in a decrease in the estimated IRF PPS payments if not for the hold harmless policy.
- The total proposed change in estimated payments based on the FY 2008 proposed policies relative to estimated FY 2007 payments without the proposed policies.

2. Description of Table 6

The table below categorizes IRFs by geographic location, including urban or rural location and location with respect to CMS's nine census divisions (as defined on the cost report) of the country. In addition, the table divides IRFs into those that are separate

rehabilitation hospitals (otherwise called freestanding hospitals in this section), those that are rehabilitation units of a hospital (otherwise called hospital units in this section), rural or urban facilities, ownership (otherwise called for-profit, non-profit, and government), and by teaching status. The top row of the table shows the overall impact on the 1,234 IRFs included in the analysis.

The next 12 rows of Table 6 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 1,015 IRFs located in urban areas included in our analysis. Among these, there are 816 IRF units of hospitals located in urban areas and 199 freestanding IRF hospitals located in urban areas. There are 219 IRFs located in rural areas included in our analysis. Among these, there are 199 IRF units of hospitals located in rural areas and 20 freestanding IRF hospitals located in rural areas. There are 419 for-profit IRFs. Among these, there are 340 IRFs in urban areas and 79 IRFs in rural areas. There are 748 non-profit IRFs. Among these, there are 624 urban IRFs and 124 rural IRFs. There are 67 government-owned IRFs. Among these, there are 51 urban IRFs and 16 rural IRFs.

The remaining three parts of Table 6 show IRFs grouped by their geographic location within a region, and the last part groups IRFs by teaching status. First, IRFs located in urban areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. Second, IRFs located in rural areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. Finally, IRFs are grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent.

The estimated impacts of each proposed change to the facility categories listed above are shown in the columns of Table 6. The description of each column is as follows:

Column (1) shows the facility classification categories described above.

Column (2) shows the number of IRFs in each category.

Column (3) shows the number of cases in each category.

Column (4) shows the estimated effect of the proposed adjustment to the outlier threshold amount so that estimated outlier payments decrease from approximately 3.8 percent in FY 2007 to 3 percent of total estimated payments for FY 2008.

Column (5) shows the estimated effect of the market basket update to the IRF PPS payment rates.

Column (6) shows the estimated effect of the update to the IRF labor-related share, wage index, and the final year of the hold harmless policy, in a budget neutral manner.

Column (7) compares our estimates of the payments per discharge, incorporating all of the proposed changes reflected in this proposed rule for FY 2008, to our estimates of payments per discharge in FY 2007 (without these proposed changes). The average estimated increase for all IRFs is approximately 2.4 percent. This estimated increase includes the effects of the 3.3 percent market basket update. It also includes the 0.9 percent overall estimated decrease in estimated IRF outlier payments from the proposed update to the outlier threshold amount. Because we are making the remainder of the proposed changes outlined in this proposed rule in a budget-neutral manner, they would not affect total estimated IRF payments in the aggregate. However, as described in more detail in each section, they would affect the estimated distribution of payments among providers.

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Table 6: Projected Impact on the IRF PPS for FY 2008

Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	Outlier (4)	Market Basket (5)	FY08 CBSA wage index, labor-related share, and hold harmless (6)	Total Change % (7)
Total	1,234	447,163	-0.9%	3.3%	0.0%	2.4%
Urban unit	816	249,213	-1.1	3.3	0.2	2.4
Rural unit	199	38,448	-0.9	3.3	0.2	2.6
Urban hospital	199	153,777	-0.5	3.3	-0.3	2.4
Rural hospital	20	5,725	-0.4	3.3	0.3	3.1
Urban For-Profit	340	153,740	-0.7	3.3	-0.3	2.2
Rural For-Profit	79	15,444	-0.7	3.3	0.1	2.7
Urban Non-Profit	624	233,412	-0.9	3.3	0.2	2.5
Rural Non-Profit	124	25,711	-0.8	3.3	0.3	2.7
Urban Government	51	15,838	-1.1	3.3	-0.3	1.9
Rural Government	16	3,018	-1.3	3.3	0.3	2.3
Urban	1,015	402,990	-0.9	3.3	0.0	2.4
Rural	219	44,173	-0.8	3.3	0.2	2.7
Urban by region						
Urban New England	35	18,486	-0.9	3.3	-0.4	1.9
Urban Middle Atlantic	160	69,955	-0.7	3.3	0.1	2.7
Urban South Atlantic	130	68,102	-0.8	3.3	-0.6	1.8
Urban East North Central	194	68,144	-0.9	3.3	0.6	3.0
Urban East South Central	51	28,686	-0.7	3.3	-0.8	1.8
Urban West North Central	71	21,860	-1.0	3.3	0.3	2.5
Urban West South Central	185	73,956	-0.9	3.3	-0.4	2.0
Urban Mountain	77	25,325	-1.0	3.3	0.7	3.0
Urban Pacific	112	28,476	-1.1	3.3	0.5	2.7
Rural by region						
Rural New England	5	1,082	-1.4	3.3	-0.9	1.0
Rural Middle Atlantic	17	4,118	-0.5	3.3	0.7	3.4
Rural South Atlantic	26	6,372	-0.5	3.3	-0.1	2.7
Rural East North Central	39	6,867	-0.9	3.3	0.4	2.8
Rural East South Central	24	5,599	-0.6	3.3	0.5	3.2
Rural West North Central	36	6,843	-1.1	3.3	0.4	2.6
Rural West South Central	59	11,834	-0.8	3.3	0.1	2.6
Rural Mountain	9	992	-1.7	3.3	-0.3	1.3
Rural Pacific	4	466	-1.4	3.3	0.3	2.2
Teaching Status						
Non-teaching	1,112	390,066	-0.9	3.3	0.0	2.4
Resident to ADC less than 10%	64	37,601	-0.7	3.3	0.1	2.8
Resident to ADC 10%-19%	40	15,271	-1.0	3.3	0.1	2.5
Resident to ADC greater than 19%	18	4,225	-0.8	3.3	0.1	2.9

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3. Impact of the Proposed Update to the Outlier Threshold Amount (Column 4, Table 6)

In the FY 2007 IRF PPS final rule (71 FR 48354), we used FY 2004 patient-level claims data (the best, most complete data available at that time) to set the outlier threshold amount for FY 2007 so that estimated outlier payments would equal 3 percent of total estimated payments for FY 2007. For this proposed rule, we are proposing to update our analysis using FY 2005 data. Using the updated FY 2005 data, we now estimate that IRF outlier payments as a percentage of total estimated payments for FY 2007 increased from 3 percent using the FY 2004 data to approximately 3.8 percent using the updated FY 2005 data. Thus, we are proposing to adjust the outlier threshold amount for FY 2008 to $7,522 to set total estimated outlier payments equal to 3 percent of total estimated payments in FY 2008. The proposed estimated change in total payments between FY 2007 and FY 2008, therefore, includes a 0.9 percent (rounded from 0.85 percent) overall estimated decrease in payments because the estimated outlier portion of total payments is estimated to decrease from approximately 3.8 percent to 3 percent.

The impact of this proposed update (as shown in column 4 of Table 6) is to decrease estimated overall payments to IRFs by 0.9 percent. We do not estimate that any group of IRFs would experience an increase in payments from this proposed update. We estimate the largest decrease in payments to be a 1.7 percent decrease in estimated payments to rural IRFs in the Mountain region.

4. Impact of the Proposed Market Basket Update to the IRF PPS Payment Rates (Column 5, Table 6)

In column 5 of Table 6, we present the estimated effects of the proposed market basket update to the IRF PPS payment rates. In the aggregate, and across all hospital groups, the proposed update would result in a 3.3 percent increase in overall estimated payments to IRFs.

5. Impact of the Proposed CBSA Wage Index, Labor-Related Share, and the Hold Harmless Policy for FY 2008 (Column 6, Table 6).

In column 6 of Table 6, we present the effects of the proposed budget neutral update of the wage index, labor-related share, and the final year of the hold harmless policy. In FY 2006, we provided a 1-year blended wage index and a 3-year phase out of the rural adjustment for IRFs that changed designation because of the change from MSAs to CBSAs (referenced as the hold harmless policy). We applied the blended wage index to all IRFs and the hold harmless policy to those IRFs that qualify, as described in § 412.624(e)(7), in order to mitigate the impact of the change from the MSA-based labor area definitions to the CBSA-based labor area definitions for IRFs.

As discussed in the FY 2007 IRF PPS final rule (71 FR 48345), the blended wage index expired in FY 2007 and will not be applied for discharges occurring on or after October 1, 2006. In addition, FY 2008 is the third and final year of the hold harmless policy, and we are continuing to apply this policy as described in the FY 2006 final rule in a budget neutral manner.

As discussed in this proposed rule, we are proposing to revise our methodology to impute a rural wage index value for rural areas without hospital wage data and update the wage index based on the CBSA-based labor market area definitions in a budget neutral manner. We are also applying the third and final year of the hold harmless policy in a budget neutral manner. Thus, in the aggregate, the estimated impact of the proposed update to the wage index and labor-related share is zero percent.

In the aggregate and for all urban IRFs, we do not estimate that these proposed changes would affect overall estimated payments to IRFs. However, we estimate that these proposed changes would have small distributional effects. We estimate a 0.2 percent increase in estimated payments to rural IRFs. We estimate the largest increase in payments to be a 0.7 percent increase for urban IRFs in the Mountain region and for rural IRFs in the Middle Atlantic region. We estimate the largest decrease in payments to be a 0.9 percent decrease for rural IRFs in the New England region.

C. Anticipated Effects of the 75 Percent Rule Policy

The existing policy for classifying a facility as an IRF, which is described in § 412.23(b)(2), allows the inclusion of comorbidities meeting certain requirements in the calculations used to determine the compliance percentage for cost reporting periods beginning on or after July 1, 2004, and before July 1, 2008. However, for cost reporting periods beginning on or after July 1, 2008, comorbidities will not be eligible for inclusion in the calculations used to determine if the provider meets the 75 percent compliance threshold. As discussed in section II of this proposed rule, we are not proposing to change existing policy. On or after July 1, 2008, we anticipate that IRFs would make adjustments to their admission and coding practices to continue to meet the compliance threshold. Data limitations and two important sources of uncertainty prevent a precise estimate of the effect of this policy at this time. One source of uncertainty is what proportion of patients who would no longer be treated in IRFs would instead be treated by other, lower-cost post-acute care settings such as skilled nursing facilities or home health agencies. Another source of uncertainty is determining how providers will make adjustments on or after July 1, 2008. While we cannot make a precise estimate at this time, we anticipate modest decreases in Medicare payments beginning on or after July 1, 2008.

D. Alternatives Considered

Because we have determined that this proposed rule would have a significant economic impact on IRFs and on a substantial number of small entities, we will discuss the alternative changes to the IRF PPS that we considered.

Section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services. As discussed above, we estimate the RPL market basket increase factor for FY 2008 to be 3.3 percent. This increase factor represents the majority of the impact on IRF providers shown in Table 6. Thus, we believe this estimated net increase in payments across all categories of IRFs represents a benefit to IRF providers and, thus, to IRFs that are small entities.

We considered maintaining the existing outlier threshold amount for FY 2008 because this proposed update would have a negative impact on IRF providers and, therefore, on small entities. If we maintain the FY 2007 outlier threshold amount, more outlier cases would have qualified for the additional outlier payments in FY 2008. However, analysis of updated FY 2005 data indicates that estimated outlier payments would not equal 3 percent of estimated total payments for FY 2008 unless we proposed to update the outlier threshold amount. Also, we estimate that the effect of this proposal on estimated payments to IRFs is small (less than 1 percent).

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 8 below, we

have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the proposed changes presented in this proposed rule based on the data for 1,234 IRFs in our database. All estimated expenditures are classified as transfers to Medicare providers (that is, IRFs).

TABLE 8.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2007 IRF PPS RATE YEAR TO THE 2008 IRF PPS RATE YEAR (IN MILLIONS)

Category	Transfers
Annualized Monetized Transfers.	$150 million.
From Whom To Whom?	Federal Government to IRF Medicare Providers.

F. Conclusion (Column 7, Table 6)

Overall, the estimated payments per discharge for IRFs in FY 2008 are projected to increase by 2.4 percent, compared with those in FY 2007, as reflected in column 7 of Table 6. We estimate that IRFs in urban areas would experience a 2.4 percent increase in estimated payments per discharge compared with FY 2007. We estimate that IRFs in rural areas would experience a 2.7 percent increase in estimated payments per discharge compared with FY 2007. We estimate that rehabilitation units and freestanding rehabilitation hospitals in urban areas would both experience a 2.4 percent increase in estimated payments per discharge. We estimate that rehabilitation units in rural areas would experience a 2.6 percent increase in estimated payments per discharge, while freestanding rehabilitation hospitals in rural areas would experience a 3.1 percent increase in estimated payments per discharge.

Overall, we estimate that the largest payment increase would be 3.4 percent among rural IRFs in the Middle Atlantic region. We do not estimate that any group of IRFs would experience an overall decrease in payments from the proposed changes in this proposed rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

2. Section 412.624 is amended by revising paragraph (f)(2)(v) to read as follows:

§ 412.624 Methodology for calculating the Federal prospective payment rates.

* * * * *

(f) * * *

(2) * * *

(v) By applying the adjustment described in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(7) of this section to the unadjusted payment amount determined in paragraph (f)(2)(iv) of this section to equal the adjusted transfer payment amount, subject to paragraph (e)(5) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplemental Medical Insurance Program).

Dated: March 22, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 3, 2007.

Michael O. Leavitt,

Secretary.

The following addendum will not appear in the Code of Federal Regulations.

Addendum

This addendum contains the tables referred to throughout the preamble of this proposed rule. The tables presented below are as follows:

Table 1.—Proposed Inpatient Rehabilitation Facility Wage Index for Urban Areas for Discharges Occurring from October 1, 2007 through September 30, 2008

Table 2.—Proposed Inpatient Rehabilitation Facility Wage Index for Rural Areas for Discharges Occurring from October 1, 2007 through September 30, 2008

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8000
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3915
	Aguada Municipio, PR.	
	Aguadilla Municipio, PR.	
	Añasco Municipio, PR.	
	Isabela Municipio, PR.	
	Lares Municipio, PR.	
	Moca Municipio, PR.	
	Rincón Municipio, PR.	
	San Sebastián Municipio, PR.	
10420	Akron, OH	0.8654
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	0.8991
	Baker County, GA.	
	Dougherty County, GA.	
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8720
	Albany County, NY.	
	Rensselaer County, NY.	
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	0.9458
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.8006
	Grant Parish, LA.	
	Rapides Parish, LA.	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9947
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8812
	Blair County, PA.	
11100	Amarillo, TX	0.9169
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	0.9760
	Story County, IA.	
11260	Anchorage, AK	1.2023
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.8681
	Madison County, IN.	
11340	Anderson, SC	0.9017
	Anderson County, SC.	
11460	Ann Arbor, MI	1.0826
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7770
	Calhoun County, AL.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
11540	Appleton, WI	0.9455
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.9216
	Buncombe County, NC.	
	Haywood County, NC.	
	Henderson County, NC.	
	Madison County, NC.	
12020	Athens-Clarke County, GA	0.9856
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9762
	Barrow County, GA.	
	Bartow County, GA.	
	Butts County, GA.	
	Carroll County, GA.	
	Cherokee County, GA.	
	Clayton County, GA.	
	Cobb County, GA.	
	Coweta County, GA.	
	Dawson County, GA.	
	DeKalb County, GA.	
	Douglas County, GA.	
	Fayette County, GA.	
	Forsyth County, GA.	
	Fulton County, GA.	
	Gwinnett County, GA.	
	Haralson County, GA.	
	Heard County, GA.	
	Henry County, GA.	
	Jasper County, GA.	
	Lamar County, GA.	
	Meriwether County, GA.	
	Newton County, GA.	
	Paulding County, GA.	
	Pickens County, GA.	
	Pike County, GA.	
	Rockdale County, GA.	
	Spalding County, GA.	
	Walton County, GA.	
12100	Atlantic City, NJ	1.1831
	Atlantic County, NJ.	
12220	Auburn-Opelika, AL	0.8096
	Lee County, AL.	
12260	Augusta-Richmond County, GA-SC	0.9667
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	
	Richmond County, GA.	
	Aiken County, SC.	
	Edgefield County, SC.	
12420	Austin-Round Rock, TX	0.9344
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield, CA	1.0725
	Kern County, CA.	
12580	Baltimore-Towson, MD	1.0088
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	0.9711

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2539
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8084
	Ascension Parish, LA.	
	East Baton Rouge Parish, LA.	
	East Feliciana Parish, LA.	
	Iberville Parish, LA.	
	Livingston Parish, LA.	
	Pointe Coupee Parish, LA.	
	St. Helena Parish, LA.	
	West Baton Rouge Parish, LA.	
	West Feliciana Parish, LA.	
12980	Battle Creek, MI	0.9762
	Calhoun County, MI.	
13020	Bay City, MI	0.9251
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8595
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1104
	Whatcom County, WA.	
13460	Bend, OR	1.0743
	Deschutes County, OR.	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0903
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8712
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8786
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8894
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7240
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.8213
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8533
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.8944
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9401
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.1679
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0350
	Boulder County, CO.	
14540	Bowling Green, KY	0.8148
	Edmonson County, KY.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.0913
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2659
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.9430
	Cameron County, TX.	
15260	Brunswick, GA	1.0164
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9424
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8674
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9474
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.0970
	Middlesex County, MA.	
15804	Camden, NJ	1.0392
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.9031
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9342
	Lee County, FL.	
16180	Carson City, NV	1.0025
	Carson City, NV.	
16220	Casper, WY	0.9145
	Natrona County, WY.	
16300	Cedar Rapids, IA	0.8888
	Benton County, IA.	
	Jones County, IA.	
	Linn County, IA.	
16580	Champaign-Urbana, IL	0.9644
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8542
	Boone County, WV.	
	Clay County, WV.	
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston, SC	0.9145
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9554
	Anson County, NC.	
	Cabarrus County, NC.	
	Gaston County, NC.	
	Mecklenburg County, NC.	
	Union County, NC.	
	York County, SC.	
16820	Charlottesville, VA	1.0125
	Albemarle County, VA.	
	Fluvanna County, VA.	
	Greene County, VA.	
	Nelson County, VA.	
	Charlottesville City, VA.	
16860	Chattanooga, TN-GA	0.8948
	Catoosa County, GA.	
	Dade County, GA.	
	Walker County, GA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Hamilton County, TN.	
	Marion County, TN.	
	Sequatchie County, TN.	
16940	Cheyenne, WY	0.9060
	Laramie County, WY.	
16974	Chicago-Naperville-Joliet, IL	1.0751
	Cook County, IL.	
	DeKalb County, IL.	
	DuPage County, IL.	
	Grundy County, IL.	
	Kane County, IL.	
	Kendall County, IL.	
	McHenry County, IL.	
	Will County, IL.	
17020	Chico, CA	1.1053
	Butte County, CA.	
17140	Cincinnati-Middletown, OH-KY-IN	0.9601
	Dearborn County, IN.	
	Franklin County, IN.	
	Ohio County, IN.	
	Boone County, KY.	
	Bracken County, KY.	
	Campbell County, KY.	
	Gallatin County, KY.	
	Grant County, KY.	
	Kenton County, KY.	
	Pendleton County, KY.	
	Brown County, OH.	
	Butler County, OH.	
	Clermont County, OH.	
	Hamilton County, OH.	
	Warren County, OH.	
17300	Clarksville, TN-KY	0.8436
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.8109
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9400
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9344
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9045
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9701
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8542
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.8933
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA-AL	0.8239
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Muscogee County, GA.	
18020	Columbus, IN	0.9318
	Bartholomew County, IN.	
18140	Columbus, OH	1.0107
	Delaware County, OH.	
	Fairfield County, OH.	
	Franklin County, OH.	
	Licking County, OH.	
	Madison County, OH.	
	Morrow County, OH.	
	Pickaway County, OH.	
	Union County, OH.	
18580	Corpus Christi, TX	0.8564
	Aransas County, TX.	
	Nueces County, TX.	
	San Patricio County, TX.	
18700	Corvallis, OR	1.1546
	Benton County, OR.	
19060	Cumberland, MD-WV	0.8446
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	1.0075
	Collin County, TX.	
	Dallas County, TX.	
	Delta County, TX.	
	Denton County, TX.	
	Ellis County, TX.	
	Hunt County, TX.	
	Kaufman County, TX.	
	Rockwall County, TX.	
19140	Dalton, GA	0.9093
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.9266
	Vermilion County, IL.	
19260	Danville, VA	0.8451
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.8846
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9037
	Greene County, OH.	
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.8159
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.8172
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9263
	Volusia County, FL.	
19740	Denver-Aurora, CO	1.0930
	Adams County, CO.	
	Arapahoe County, CO.	
	Broomfield County, CO.	
	Clear Creek County, CO.	
	Denver County, CO.	
	Douglas County, CO.	
	Elbert County, CO.	
	Gilpin County, CO.	
	Jefferson County, CO.	
	Park County, CO.	
19780	Des Moines-West Des Moines, IA	0.9214
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	1.0281
	Wayne County, MI.	
20020	Dothan, AL	0.7381
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	0.9847
	Kent County, DE.	
20220	Dubuque, IA	0.9133
	Dubuque County, IA.	
20260	Duluth, MN-WI	1.0042
	Carlton County, MN.	
	St. Louis County, MN.	
	Douglas County, WI.	
20500	Durham, NC	0.9826
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9630
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison, NJ	1.1190
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	
	Somerset County, NJ.	
20940	El Centro, CA	0.9076
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8697
	Hardin County, KY.	
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9426
	Elkhart County, IN.	
21300	Elmira, NY	0.8240
	Chemung County, NY.	
21340	El Paso, TX	0.9053
	El Paso County, TX.	
21500	Erie, PA	0.8827
	Erie County, PA.	
21604	Essex County, MA	1.0418
	Essex County, MA.	
21660	Eugene-Springfield, OR	1.0876
	Lane County, OR.	
21780	Evansville, IN-KY	0.9071
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1059
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.4036
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.8250
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.8589
	San Juan County, NM.	
22180	Fayetteville, NC	0.8945
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8865
	Benton County, AR.	
	Madison County, AR.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.1601
	Coconino County, AZ.	
22420	Flint, MI	1.0969
	Genesee County, MI.	
22500	Florence, SC	0.8388
	Darlington County, SC.	
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL	0.7843
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	1.0063
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	0.9544
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0133
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.7731
	Crawford County, AR.	
	Franklin County, AR.	
	Sebastian County, AR.	
	Le Flore County, OK.	
	Sequoyah County, OK.	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8643
	Okaloosa County, FL.	
23060	Fort Wayne, IN	0.9517
	Allen County, IN.	
	Wells County, IN.	
	Whitley County, IN.	
23104	Fort Worth-Arlington, TX	0.9569
	Johnson County, TX.	
	Parker County, TX.	
	Tarrant County, TX.	
	Wise County, TX.	
23420	Fresno, CA	1.0943
	Fresno County, CA.	
23460	Gadsden, AL	0.8066
	Etowah County, AL.	
23540	Gainesville, FL	0.9277
	Alachua County, FL.	
	Gilchrist County, FL.	
23580	Gainesville, GA	0.8958
	Hall County, GA.	
23844	Gary, IN	0.9334
	Jasper County, IN.	
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8324
	Warren County, NY.	
	Washington County, NY.	
24140	Goldsboro, NC	0.9171
	Wayne County, NC.	
24220	Grand Forks, ND-MN	0.7949
	Polk County, MN.	
	Grand Forks County, ND.	
24300	Grand Junction, CO	0.9668
	Mesa County, CO.	
24340	Grand Rapids-Wyoming, MI	0.9455
	Barry County, MI.	
	Ionia County, MI.	
	Kent County, MI.	
	Newaygo County, MI.	
24500	Great Falls, MT	0.8598
	Cascade County, MT.	
24540	Greeley, CO	0.9602
	Weld County, CO.	
24580	Green Bay, WI	0.9787
	Brown County, WI.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Kewaunee County, WI.	
	Oconto County, WI.	
24660	Greensboro-High Point, NC	0.8866
	Guilford County, NC.	
	Randolph County, NC.	
	Rockingham County, NC.	
24780	Greenville, NC	0.9432
	Greene County, NC.	
	Pitt County, NC.	
24860	Greenville, SC	0.9804
	Greenville County, SC.	
	Laurens County, SC.	
	Pickens County, SC.	
25020	Guayama, PR	0.3235
	Arroyo Municipio, PR.	
	Guayama Municipio, PR.	
	Patillas Municipio, PR.	
25060	Gulfport-Biloxi, MS	0.8915
	Hancock County, MS.	
	Harrison County, MS.	
	Stone County, MS.	
25180	Hagerstown-Martinsburg, MD-WV	0.9038
	Washington County, MD.	
	Berkeley County, WV.	
	Morgan County, WV.	
25260	Hanford-Corcoran, CA	1.0282
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9402
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.9073
	Rockingham County, VA.	
	Harrisonburg City, VA.	
25540	Hartford-West Hartford-East Hartford, CT	1.0894
	Hartford County, CT.	
	Litchfield County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.7430
	Forrest County, MS.	
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.9010
	Alexander County, NC.	
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
25980	Hinesville-Fort Stewart, GA [1]	0.9178
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.9163
	Ottawa County, MI.	
26180	Honolulu, HI	1.1096
	Honolulu County, HI.	
26300	Hot Springs, AR	0.8782
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.8082
	Lafourche Parish, LA.	
	Terrebonne Parish, LA.	
26420	Houston-Sugar Land-Baytown, TX	1.0008
	Austin County, TX.	
	Brazoria County, TX.	
	Chambers County, TX.	
	Fort Bend County, TX.	
	Galveston County, TX.	
	Harris County, TX.	
	Liberty County, TX.	
	Montgomery County, TX.	
	San Jacinto County, TX.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Waller County, TX.	
26580	Huntington-Ashland, WV-KY-OH	0.8997
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.9007
	Limestone County, AL.	
	Madison County, AL.	
26820	Idaho Falls, ID	0.9088
	Bonneville County, ID.	
	Jefferson County, ID.	
26900	Indianapolis-Carmel, IN	0.9895
	Boone County, IN.	
	Brown County, IN.	
	Hamilton County, IN.	
	Hancock County, IN.	
	Hendricks County, IN.	
	Johnson County, IN.	
	Marion County, IN.	
	Morgan County, IN.	
	Putnam County, IN.	
	Shelby County, IN.	
26980	Iowa City, IA	0.9714
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.9928
	Tompkins County, NY.	
27100	Jackson, MI	0.9560
	Jackson County, MI.	
27140	Jackson, MS	0.8271
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	
	Simpson County, MS.	
27180	Jackson, TN	0.8853
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.9165
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	
	St. Johns County, FL.	
27340	Jacksonville, NC	0.8231
	Onslow County, NC.	
27500	Janesville, WI	0.9655
	Rock County, WI.	
27620	Jefferson City, MO	0.8332
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
27740	Johnson City, TN	0.8043
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.8620
	Cambria County, PA.	
27860	Jonesboro, AR	0.7662
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.8605
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	1.0704
	Kalamazoo County, MI.	
	Van Buren County, MI.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
28100	Kankakee-Bradley, IL	1.0083
	Kankakee County, IL.	
28140	Kansas City, MO-KS	0.9495
	Franklin County, KS.	
	Johnson County, KS.	
	Leavenworth County, KS.	
	Linn County, KS.	
	Miami County, KS.	
	Wyandotte County, KS.	
	Bates County, MO.	
	Caldwell County, MO.	
	Cass County, MO.	
	Clay County, MO.	
	Clinton County, MO.	
	Jackson County, MO.	
	Lafayette County, MO.	
	Platte County, MO.	
	Ray County, MO.	
28420	Kennewick-Richland-Pasco, WA	1.0343
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-Temple-Fort Hood, TX	0.8901
	Bell County, TX.	
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7985
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.9367
	Ulster County, NY.	
28940	Knoxville, TN	0.8249
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.9669
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WI-MN	0.9426
	Houston County, MN.	
	La Crosse County, WI.	
29140	Lafayette, IN	0.8931
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8289
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7914
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL-WI	1.0570
	Lake County, IL.	
	Kenosha County, WI.	
29460	Lakeland, FL	0.8879
	Polk County, FL.	
29540	Lancaster, PA	0.9589
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	1.0088
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.7811
	Webb County, TX.	
29740	Las Cruces, NM	0.9273
	Dona Ana County, NM.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
29820	Las Vegas-Paradise, NV	1.1430
	Clark County, NV.	
29940	Lawrence, KS	0.8365
	Douglas County, KS.	
30020	Lawton, OK	0.8065
	Comanche County, OK.	
30140	Lebanon, PA	0.8679
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9853
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	Lewiston-Auburn, ME	0.9126
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.9181
	Bourbon County, KY.	
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9042
	Allen County, OH.	
30700	Lincoln, NE	1.0092
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock, AR	0.8890
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT-ID	0.9022
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8788
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	1.0011
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.1760
	Los Angeles County, CA.	
31140	Louisville, KY-IN	0.9118
	Clark County, IN.	
	Floyd County, IN.	
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	
	Henry County, KY.	
	Jefferson County, KY.	
	Meade County, KY.	
	Nelson County, KY.	
	Oldham County, KY.	
	Shelby County, KY.	
	Spencer County, KY.	
	Trimble County, KY.	
31180	Lubbock, TX	0.8613
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8694
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9519
	Bibb County, GA.	
	Crawford County, GA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.8154
	Madera County, CA.	
31540	Madison, WI	1.0840
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0243
	Hillsborough County, NH.	
	Merrimack County, NH.	
31900	Mansfield, OH	0.9271
	Richland County, OH.	
32420	Mayagüez, PR	0.3848
	Hormigueros Municipio, PR.	
	Mayagüez Municipio, PR.	
32580	McAllen-Edinburg-Pharr, TX	0.8773
	Hidalgo County, TX.	
32780	Medford, OR	1.0818
	Jackson County, OR.	
32820	Memphis, TN-MS-AR	0.9373
	Crittenden County, AR.	
	DeSoto County, MS.	
	Marshall County, MS.	
	Tate County, MS.	
	Tunica County, MS.	
	Fayette County, TN.	
	Shelby County, TN.	
	Tipton County, TN.	
32900	Merced, CA	1.1471
	Merced County, CA.	
33124	Miami-Miami Beach-Kendall, FL	0.9812
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.9118
	LaPorte County, IN.	
33260	Midland, TX	0.9786
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	1.0218
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.0946
	Anoka County, MN.	
	Carver County, MN.	
	Chisago County, MN.	
	Dakota County, MN.	
	Hennepin County, MN.	
	Isanti County, MN.	
	Ramsey County, MN.	
	Scott County, MN.	
	Sherburne County, MN.	
	Washington County, MN.	
	Wright County, MN.	
	Pierce County, WI.	
	St. Croix County, WI.	
33540	Missoula, MT	0.8928
	Missoula County, MT.	
33660	Mobile, AL	0.7913
	Mobile County, AL.	
33700	Modesto, CA	1.1729
	Stanislaus County, CA.	
33740	Monroe, LA	0.7997
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.9707
	Monroe County, MI.	
33860	Montgomery, AL	0.8009
	Autauga County, AL.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8423
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.7933
	Grainger County, TN.	
	Hamblen County, TN.	
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0517
	Skagit County, WA.	
34620	Muncie, IN	0.8562
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	0.9941
	Muskegon County, MI.	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8810
	Horry County, SC.	
34900	Napa, CA	1.3374
	Napa County, CA.	
34940	Naples-Marco Island, FL	0.9941
	Collier County, FL.	
34980	Nashville-Davidson—Murfreesboro, TN	0.9847
	Cannon County, TN.	
	Cheatham County, TN.	
	Davidson County, TN.	
	Dickson County, TN.	
	Hickman County, TN.	
	Macon County, TN.	
	Robertson County, TN.	
	Rutherford County, TN.	
	Smith County, TN.	
	Sumner County, TN.	
	Trousdale County, TN.	
	Williamson County, TN.	
	Wilson County, TN.	
35004	Nassau-Suffolk, NY	1.2662
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ-PA	1.1892
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	
35300	New Haven-Milford, CT	1.1953
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.8831
	Jefferson Parish, LA.	
	Orleans Parish, LA.	
	Plaquemines Parish, LA.	
	St. Bernard Parish, LA.	
	St. Charles Parish, LA.	
	St. John the Baptist Parish, LA.	
	St. Tammany Parish, LA.	
35644	New York-Wayne-White Plains, NY-NJ	1.3177
	Bergen County, NJ.	
	Hudson County, NJ.	
	Passaic County, NJ.	
	Bronx County, NY.	
	Kings County, NY.	
	New York County, NY.	
	Putnam County, NY.	
	Queens County, NY.	
	Richmond County, NY.	
	Rockland County, NY.	
	Westchester County, NY.	
35660	Niles-Benton Harbor, MI	0.8915
	Berrien County, MI.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
35980	Norwich-New London, CT	1.1932
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.5819
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.8867
	Marion County, FL.	
36140	Ocean City, NJ	1.0472
	Cape May County, NJ.	
36220	Odessa, TX	1.0073
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.8995
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	
36420	Oklahoma City, OK	0.8843
	Canadian County, OK.	
	Cleveland County, OK.	
	Grady County, OK.	
	Lincoln County, OK.	
	Logan County, OK.	
	McClain County, OK.	
	Oklahoma County, OK.	
36500	Olympia, WA	1.1081
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE-IA	0.9450
	Harrison County, IA.	
	Mills County, IA.	
	Pottawattamie County, IA.	
	Cass County, NE.	
	Douglas County, NE.	
	Sarpy County, NE.	
	Saunders County, NE.	
	Washington County, NE.	
36740	Orlando, FL	0.9452
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9315
	Winnebago County, WI.	
36980	Owensboro, KY	0.8748
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1546
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.9443
	Brevard County, FL.	
37460	Panama City-Lynn Haven, FL	0.8027
	Bay County, FL.	
37620	Parkersburg-Marietta, WV-OH	0.7977
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	
37700	Pascagoula, MS	0.8215
	George County, MS.	
	Jackson County, MS.	
37860	Pensacola-Ferry Pass-Brent, FL	0.8000
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.8982
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.0996
	Bucks County, PA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0287
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.8383
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8674
	Allegheny County, PA.	
	Armstrong County, PA.	
	Beaver County, PA.	
	Butler County, PA.	
	Fayette County, PA.	
	Washington County, PA.	
	Westmoreland County, PA.	
38340	Pittsfield, MA	1.0266
	Berkshire County, MA.	
38540	Pocatello, ID	0.9400
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4842
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	0.9908
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1416
	Clackamas County, OR.	
	Columbia County, OR.	
	Multnomah County, OR.	
	Washington County, OR.	
	Yamhill County, OR.	
	Clark County, WA.	
	Skamania County, WA.	
38940	Port St. Lucie-Fort Pierce, FL	0.9833
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0911
	Dutchess County, NY.	
	Orange County, NY.	
39140	Prescott, AZ	0.9836
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0783
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9537
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8753
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.9405
	Charlotte County, FL.	
39540	Racine, WI	0.9356
	Racine County, WI.	
39580	Raleigh-Cary, NC	0.9864
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	0.8833
	Meade County, SD.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Pennington County, SD.	
39740	Reading, PA	0.9622
	Berks County, PA.	
39820	Redding, CA	1.3198
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.1963
	Storey County, NV.	
	Washoe County, NV.	
40060	Richmond, VA	0.9177
	Amelia County, VA.	
	Caroline County, VA.	
	Charles City County, VA.	
	Chesterfield County, VA.	
	Cumberland County, VA.	
	Dinwiddie County, VA.	
	Goochland County, VA.	
	Hanover County, VA.	
	Henrico County, VA.	
	King and Queen County, VA.	
	King William County, VA.	
	Louisa County, VA.	
	New Kent County, VA.	
	Powhatan County, VA.	
	Prince George County, VA.	
	Sussex County, VA.	
	Colonial Heights City, VA.	
	Hopewell City, VA.	
	Petersburg City, VA.	
	Richmond City, VA.	
40140	Riverside-San Bernardino-Ontario, CA	1.0904
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.8647
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.1408
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.8994
	Livingston County, NY.	
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9989
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	1.0159
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.8854
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.9193
	Floyd County, GA.	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.3372
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.8874
	Saginaw County, MI.	
41060	St. Cloud, MN	1.0362
	Benton County, MN.	
	Stearns County, MN.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
41100	St. George, UT	0.9265
	Washington County, UT.	
41140	St. Joseph, MO-KS	1.0118
	Doniphan County, KS.	
	Andrew County, MO.	
	Buchanan County, MO.	
	DeKalb County, MO.	
41180	St. Louis, MO-IL	0.9005
	Bond County, IL.	
	Calhoun County, IL.	
	Clinton County, IL.	
	Jersey County, IL.	
	Macoupin County, IL.	
	Madison County, IL.	
	Monroe County, IL.	
	St. Clair County, IL.	
	Crawford County, MO.	
	Franklin County, MO.	
	Jefferson County, MO.	
	Lincoln County, MO.	
	St. Charles County, MO.	
	St. Louis County, MO.	
	Warren County, MO.	
	Washington County, MO.	
	St. Louis City, MO.	
41420	Salem, OR	1.0438
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.4337
	Monterey County, CA.	
41540	Salisbury, MD	0.8953
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9402
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8362
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio, TX	0.8844
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1354
	San Diego County, CA.	
41780	Sandusky, OH	0.9302
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.5165
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4885
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5543
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4452
	Aguas Buenas Municipio, PR.	
	Aibonito Municipio, PR.	
	Arecibo Municipio, PR.	
	Barceloneta Municipio, PR.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Barranquitas Municipio, PR.	
	Bayamón Municipio, PR.	
	Caguas Municipio, PR.	
	Camuy Municipio, PR.	
	Canóvanas Municipio, PR.	
	Carolina Municipio, PR.	
	Cataño Municipio, PR.	
	Cayey Municipio, PR.	
	Ciales Municipio, PR.	
	Cidra Municipio, PR.	
	Comerío Municipio, PR.	
	Corozal Municipio, PR.	
	Dorado Municipio, PR.	
	Florida Municipio, PR.	
	Guaynabo Municipio, PR.	
	Gurabo Municipio, PR.	
	Hatillo Municipio, PR.	
	Humacao Municipio, PR.	
	Juncos Municipio, PR.	
	Las Piedras Municipio, PR.	
	Loíza Municipio, PR.	
	Manatí Municipio, PR.	
	Maunabo Municipio, PR.	
	Morovis Municipio, PR.	
	Naguabo Municipio, PR.	
	Naranjito Municipio, PR.	
	Orocovis Municipio, PR.	
	Quebradillas Municipio, PR.	
	Río Grande Municipio, PR.	
	San Juan Municipio, PR.	
	San Lorenzo Municipio, PR.	
	Toa Alta Municipio, PR.	
	Toa Baja Municipio, PR.	
	Trujillo Alto Municipio, PR.	
	Vega Alta Municipio, PR.	
	Vega Baja Municipio, PR.	
	Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA	1.1598
	San Luis Obispo County, CA.	
42044	Santa Ana-Anaheim-Irvine, CA	1.1473
	Orange County, CA.	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1091
	Santa Barbara County, CA.	
42100	Santa Cruz-Watsonville, CA	1.5457
	Santa Cruz County, CA.	
42140	Santa Fe, NM	1.0824
	Santa Fe County, NM.	
42220	Santa Rosa-Petaluma, CA	1.4464
	Sonoma County, CA.	
42260	Sarasota-Bradenton-Venice, FL	0.9868
	Manatee County, FL.	
	Sarasota County, FL.	
42340	Savannah, GA	0.9351
	Bryan County, GA.	
	Chatham County, GA.	
	Effingham County, GA.	
42540	Scranton—Wilkes-Barre, PA	0.8347
	Lackawanna County, PA.	
	Luzerne County, PA.	
	Wyoming County, PA.	
42644	Seattle-Bellevue-Everett, WA	1.1434
	King County, WA.	
	Snohomish County, WA.	
42680	Sebastian-Vero Beach, FL	0.9573
	Indian River County, FL.	
43100	Sheboygan, WI	0.9026
	Sheboygan County, WI.	
43300	Sherman-Denison, TX	0.8502
	Grayson County, TX.	
43340	Shreveport-Bossier City, LA	0.8865

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Bossier Parish, LA.	
	Caddo Parish, LA.	
	De Soto Parish, LA.	
43580	Sioux City, IA-NE-SD	0.9200
	Woodbury County, IA.	
	Dakota County, NE.	
	Dixon County, NE.	
	Union County, SD.	
43620	Sioux Falls, SD	0.9559
	Lincoln County, SD.	
	McCook County, SD.	
	Minnehaha County, SD.	
	Turner County, SD.	
43780	South Bend-Mishawaka, IN-MI	0.9842
	St. Joseph County, IN.	
	Cass County, MI.	
43900	Spartanburg, SC	0.9174
	Spartanburg County, SC.	
44060	Spokane, WA	1.0447
	Spokane County, WA.	
44100	Springfield, IL	0.8890
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0079
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8469
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.8593
	Clark County, OH.	
44300	State College, PA	0.8784
	Centre County, PA.	
44700	Stockton, CA	1.1442
	San Joaquin County, CA.	
44940	Sumter, SC	0.8083
	Sumter County, SC.	
45060	Syracuse, NY	0.9691
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.0789
	Pierce County, WA.	
45220	Tallahassee, FL	0.8942
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9144
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.8765
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.8104
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9586
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
45820	Topeka, KS	0.8730
	Jackson County, KS.	
	Jefferson County, KS.	
	Osage County, KS.	
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0835
	Mercer County, NJ.	
46060	Tucson, AZ	0.9202
	Pima County, AZ.	
46140	Tulsa, OK	0.8103
	Creek County, OK.	
	Okmulgee County, OK.	
	Osage County, OK.	
	Pawnee County, OK.	
	Rogers County, OK.	
	Tulsa County, OK.	
	Wagoner County, OK.	
46220	Tuscaloosa, AL	0.8542
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.8811
	Smith County, TX.	
46540	Utica-Rome, NY	0.8396
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.8369
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.5137
	Solano County, CA.	
47020	Victoria, TX	0.8560
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	0.9832
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8790
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	
	Mathews County, VA.	
	Surry County, VA.	
	York County, VA.	
	Chesapeake City, VA.	
	Hampton City, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City, VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City, VA.	
	Williamsburg City, VA.	
47300	Visalia-Porterville, CA	0.9968
	Tulare County, CA.	
47380	Waco, TX	0.8633
	McLennan County, TX.	
47580	Warner Robins, GA	0.8380
	Houston County, GA.	
47644	Warren-Troy-Farmington Hills, MI	1.0054
	Lapeer County, MI.	
	Livingston County, MI.	
	Macomb County, MI.	
	Oakland County, MI.	
	St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.1054

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	District of Columbia, DC.	
	Calvert County, MD.	
	Charles County, MD.	
	Prince George's County, MD.	
	Arlington County, VA.	
	Clarke County, VA.	
	Fairfax County, VA.	
	Fauquier County, VA.	
	Loudoun County, VA.	
	Prince William County, VA.	
	Spotsylvania County, VA.	
	Stafford County, VA.	
	Warren County, VA.	
	Alexandria City, VA.	
	Fairfax City, VA.	
	Falls Church City, VA.	
	Fredericksburg City, VA.	
	Manassas City, VA.	
	Manassas Park City, VA.	
	Jefferson County, WV.	
47940	Waterloo-Cedar Falls, IA	0.8408
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.9722
	Marathon County, WI.	
48260	Weirton-Steubenville, WV-OH	0.8063
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
48300	Wenatchee, WA	1.0346
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9649
	Palm Beach County, FL.	
48540	Wheeling, WV-OH	0.7010
	Belmont County, OH.	
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.9063
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	
48660	Wichita Falls, TX	0.8311
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8139
	Lycoming County, PA.	
48864	Wilmington, DE-MD-NJ	1.0684
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9835
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA-WV	1.0091
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.9276
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.0722
	Worcester County, MA.	
49420	Yakima, WA	0.9847

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Yakima County, WA.	
49500	Yauco, PR	0.3854
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9397
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH-PA	0.8802
	Mahoning County, OH.	
	Trumbull County, OH.	
	Mercer County, PA.	
49700	Yuba City, CA	1.0730
	Sutter County, CA.	
	Yuba County, CA.	
49740	Yuma, AZ	0.9109
	Yuma County, AZ.	

[1] At this time, there are no hospitals located in this CBSA-based urban area on which to base a wage index. Therefore, the wage index value is based on the methodology described in the August 15, 2005 final rule (70 FR 47880). The wage index value for this area is the average wage index for all urban areas within the state.

TABLE 2.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008

CBSA code	Nonurban area	Wage index
01	Alabama	0.7591
02	Alaska	1.0661
03	Arizona	0.8908
04	Arkansas	0.7307
05	California	1.1454
06	Colorado	0.9325
07	Connecticut	1.1709
08	Delaware	0.9705
10	Florida	0.8594
11	Georgia	0.7593
12	Hawaii	1.0448
13	Idaho	0.8120
14	Illinois	0.8320
15	Indiana	0.8538
16	Iowa	0.8681
17	Kansas	0.7998
18	Kentucky	0.7768
19	Louisiana	0.7438
20	Maine	0.8443
21	Maryland	0.8926
22	Massachusetts [2]	1.1661
23	Michigan	0.9062
24	Minnesota	0.9153
25	Mississippi	0.7738
26	Missouri	0.7927

TABLE 2.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Nonurban area	Wage index
27	Montana	0.8590
28	Nebraska	0.8677
29	Nevada	0.8944
30	New Hampshire	1.0853
31	New Jersey [1]	.....
32	New Mexico	0.8332
33	New York	0.8232
34	North Carolina	0.8588
35	North Dakota	0.7215
36	Ohio	0.8658
37	Oklahoma	0.7629
38	Oregon	0.9753
39	Pennsylvania	0.8320
40	Puerto Rico [3]	0.4047
41	Rhode Island [1]	.....
42	South Carolina	0.8566
43	South Dakota	0.8480
44	Tennessee	0.7827
45	Texas	0.7965
46	Utah	0.8140
47	Vermont	0.9744
48	Virgin Islands	0.8467
49	Virginia	0.7940
50	Washington	1.0263

TABLE 2.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008—Continued

CBSA code	Nonurban area	Wage index
51	West Virginia	0.7607
52	Wisconsin	0.9553
53	Wyoming	0.9295
65	Guam	0.9611

[1] All counties within the State are classified as urban.

[2] Massachusetts has areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2008. As discussed in the preamble in Section IV.B, we are proposing to impute a wage index value for rural Massachusettes based on the average wage index from all contiguous CBSAs.

[3] Puerto Rico has areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2008. As discussed in the preamble in Section IV.B, we are proposing to continue to use the most recent wage index previously available for Puerto Rico as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

[FR Doc. 07–2241 Filed 5–2–07; 8:45 am]

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